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HOUSE OF REPRESENTATIVES

FOR THE
FIRST SESSION OF THE FIFTY-SECOND CONGRESS.

1891-'92.

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Boise, Idaho.....	1111	4
Bradford, Pa.....	1999	10
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Elgin, Ill	1565	5
Elizabeth, N. J	1744	7
Elmira, N. Y	1848	7
Findlay, Ohio	1819	7
Fitchburg, Mass	1820	7
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Laredo, Tex	1104	4
Little Rock, Ark	1113	4
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Mammoth Hot Springs	1570	5
Massillon, Ohio	1124	4
Mount Sterling, Ky	1822	7
Muncie, Ind	2108	10
Nashua, N. H	1122	4
Natchez, Miss	1168	4
Newport News, Va	1103	4
New York, N. Y	1742	7
Oakland, Cal	843	3
Paterson, N. J	1102	4
Pine Bluff, Ark	2126	10
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Salem, Oregon	845	3
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Spokane, Wash	1109	4
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Abby Ellen (brig)	70	1
Adams, Charles H	349	2
Adams, O. F	521	2
Aldrich, E. J	284	1
Alexander, Thomas L., legal representatives of	1400	5
Alexander, William J	289	1
Allard & Crozier	49	1
Allen, Lewis D	669	2
	671	2
Allen, L D	648	2
Allen, Martha A., administratrix of Wyatt M	597	2
Allsworth, Edward	1186	4
Alsbury, Edward P	219	1
Alsup, John F	848	3
Anderson, A. E	649	2
Anderson, Charles P	1397	5

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Anderson, William H	1673	7
Andes, Abraham	784	3
Antisell, Thomas	389	2
Archer, Henry W., legal representatives	79	1
Armelin, Charles, estate of	831	3
Armistead, Vincent	1271	4
Arrears of pay and bounty, settlement of claims	484	2
Ashe, John Baptiste, legal representatives of	1132	4
Athens, Ala., Cumberland Presbyterian Church of	310	1
	1180	4
Atkinson, Mary Ellen, administratrix of Richard	285	1
Atlanta, Ga., St. Philip's Church	660	2
Atlantic Works	1965	10
Austin, Sterling T., heirs of	125	1
Avery, John, estate of	1724	7
Ayers, Asa B	1270	4
Badeaux, Ulger V	1373	5
Baker, Sarah K. T	132	1
Balzer, Gustavus A	1787	7
Bank of Louisiana, creditors of	403	2
Banks, Charles	1046	4
Barnes, Benjamin S	1523	5
Barron, Mary	1017	4
Bass, Giles W	650	2
Bates, John A	972	4
Battelle & Evans	290	1
Baudry, Omer	1428	5
Baugh, William	1271	4
Baynard, Joseph S., and others	1692	7
Bazell, James B	312	1
Beard, I. B	327	2
Beckham, William R	1271	4
Bell, Josiah L	1431	5
Bell, Mary A	660	2
Berks County, Pennsylvania Agricultural Society	698	3
Bethel Springs, Tenn., trustees of Presbyterian Church of	311	1
Beuter, Francis A	1984	10
Bigler, James	1539	5
Bigley, Nicholas J	343	2
Billingslea, Walter R	649	2
Birchett, William G., estate of	1724	7
Bishop, Clarissa	1373	5
Bishop, James	136	1
Black, Joseph	832	3
Black, L. E	1280	4
Blackistone, Richard P	1362	5
Bliss, Francis A	239	1
Blinn, Laura	1481	5
Bloom, Henrietta Y	832	3
Blosser, Joseph	784	3
Blue, Solomon, estate of	305	1
Boardman, William, legal administrators of	798	3
Bolivar (Tenn.) Lodge	598	2
Booth, M. A	659	2
Booth, Martha A	659	2
Boston, Massachusetts Atlantic Works	711	3
	1965	10
Botts, Luigi	1888	7
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Boutwell, D. W	433	2

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Bowling, John, heirs of	1545	5
Boyd, L. H.	1336	5
Bradford, James M.	936	3
Bradley, Horace L.	320	1
Branch, Jesse L.	1281	4
Brandt, Jesse L.	1272	4
Brantly, W. S., executor of J. H.	390	2
Breaux, Pierre	831	3
Brewer, Elvy	657	2
Briant, Mrs. E. H.	831	3
Bridger, James	1576	5
Bridges, Sarah E.	661	2
Bridgewater, P. H.	1408	5
Briscoe, Jackson	670	2
Bristol, Louis H.	1374	5
Broadwell, Marcus L.	153	1
Brooks, John G. W.	32	1
Brooks, William H. H.	1488	5
Brott, George F.	124	1
Brown, A. M.	1281	4
Brown, Florence A.	1010	4
Brown, John T.	971	4
Brown, M. G.	1336	5
Brown, Thomas	650	2
Brown, Thomas J.	1042	4
Bruen, John T.	535	2
Buckey, Mary E.	781	3
Buckholder, Martin, administrator Abraham	784	3
Buckmaster, William P., heirs of	1489	5
Buder, Edward A.	607	2
Bugg, J. H., and others	427	1
Burditt, Augustus P.	342	2
Burke, Edward, administrator	334	2
Burke, Hannah	1724	7
Burton, Henry H.	1429	5
Burton, William	1045	4
Bushby, William	67	1
Butler, Phillip T., and others	785	3
Butt, William	936	3
Cahalan, Edward	576	2
Caine, Catherine	276	1
Caldwell, C. C.	1467	5
Caldwell, John R.	650	2
California war claims	254	1
Cameron, Emma S.	550	2
Cameron, James and Emma S.	888	3
Camp Tyler, Ill., owners and occupants of	1637	5
Campbell, George J.	1072	4
Campbell, J. M., estate of	1272	4
Candy, Charles	1273	4
Capers, Francis F.	1692	7
Caperton, George	650	2
Carl, David and Barbette	1428	5
Carmack, Joseph W.	228	1
Carpenter, George	650	2
Carr, Rogers & Co.	814	3
Carson, Henry Polite	611	2
Carter, Alfred B.	328	2
Cartersville, Ga., First Baptist Church of	292	1
Cazes, Bertrand and Gaudin	47	1
Chapin, Gurden	1188	4

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Cheek, R. T	648	2
Chester, Lester P., and others	1288	4
Chouteau, Charles P	50	1
Cristy, John, & Co	350	2
Chum, A. B	651	2
Church and school building, claims for	11	1
Citizens' Bank, Louisiana	340	2
Citizens of Kansas, claims of	602	2
Claims for certain stores and supplies	1552	5
Clapp, George M	268	1
Clapp, Sarah A	274	1
<i>Clara Bell</i> , steamer	1219	4
Clark, James S., estate of	377	3
Clark, Stephen D	241	1
Cleveland, Elizabeth J	1281	4
Clift, William	723	3
Cobb, Blasddell & Co	350	2
Cobb, J. & O. P., & Co	350	2
Cobb, J. & O. P., & Co., surviving partners of	350	2
Cobb, Oliver P	350	2
Cobb, O. P., and others	351	2
Cole, Mrs. S. M	783	3
Coleman, Sarah and Florence	1282	4
Collards, W. H., and others	1330	5
Collins, Joseph	832	3
Columbia bridge, owners of	777	3
Connell, Michael	785	3
Cook, James A	1638	5
Cook, Jared R	649	2
Cook, Matilda	138	1
Cooner, Mary A	936	3
Cooper, Hudson, legal representatives of	776	3
Cordill, Joseph	829	3
Core, A. S	551	2
Cothes, H., heirs of	26	1
Cousens, George Lewis	216	1
Cowper, Leopold C. P	721	3
Crabill, Joseph D., estate of	784	3
Craig, William	1365	5
Cranston, Sarah M	1328	5
Crenshaw, A. L. H	112	1
Crews, Hamilton	345	2
Crider, R. H	37	1
Crider, S. F	131	1
Crompton, Richard	936	3
Cronk, Charles W	1568	5
Crosby, William	783	3
Cross, Joel	660	2
Crow, William	658	2
Crum, Elizabeth and B. L	597	2
Cunningham, Calvin B	391	2
Cunningham, Rachel	936	3
Cummings, Doyle & Co	39	1
Cummings, Phoebe	649	2
Cynthiana, Ky., destruction of property at	413	2
Dalton, Ga., trustees of the Catholic church at	291	1
Danolds, Charles A	655	2
Darly, F. O., estate of	831	3
Davis, A. W	598	2
Davis, Enoch	278	1

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Davis, Mark, heirs of	33	1
Davis, Marshall	648	2
Davis, Mark, legatees of	1636	5
Davis, Mrs. M. M.	649	2
De Bevoise, S. H., estate of	1270	4
Debnam, Thomas R.	661	2
Decatte, Owden	832	3
Deems, Lewis	1008	4
Deford, James, heirs of	1651	7
Deitrich, Emily	1279	4
Delahoussage, Sidonie	1370	5
Delille, Jean	1279	4
De Loach, Claiborne, heirs of	1270	4
	1272	4
Dennis, Mary A.	832	3
Denny, George, sr.	522	2
Dent, Warren R.	332	2
Deslonds, Mrs. Frank	1370	5
Desmarc, Alphonse	1373	5
Deucatte, Odon	83	1
Dickson, Davidson, and others	392	2
	935	3
Dieters, John	1924	7
Dittlinger, Michael	429	2
Doherty, M. A.	649	2
Dolman, Jacob	784	3
Donato, Auguste, heirs of	329	2
Donato, Belote A.	832	3
Donnell, George O.	115	1
Dorr, John H.	137	1
Dougherty, Mary A.	648	2
Douglas, W. W., administrator	832	3
Downey, Amelia	784	3
Downing, A. B., estate	649	2
Downs, Francis	1365	5
Doyle & Co.	39	1
Doyle, Johanna	785	3
Doyle, William	776	3
Driscoll, John J.	1184	4
Duffy, Eugenia and W. B.	829	3
Dulin, A. F., estate of	1724	7
Duncan, Andrew J., deceased	16	1
Dunklee, William M., administrator	1251	4
Duvall, Tandy	784	3
Dyer, Rachel	262	1
Easterly, Isaac	1281	4
Edwards, Emily	1375	5
Edwards, Sarah Upton	1071	4
Edwards, W. W.	1373	5
Eldridge, Hallam	1691	7
Ellen, Abby (brig), owners of	70	1
Elliott, John R.	1428	5
Elsaser, John A.	1336	5
Elzey, John	829	3
Engelhardt, Margaretha	1935	7
Engs, Samuel F.	596	2
Ennis, William B.	129	1
Eppes, John W.	564	2
Evans, Samuel	1411	5
Fagot, Emile, heirs of	832	3
Falls, Jane	1985	10
Farnighy, Louis O.	1499	5
Farley, John A.	1280	4

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Farnsworth, D. D. T	1670	7
Fels, Samuel	134	1
Fergusson, George B	69	1
Field, John A	654	2
Fike, Martha A	936	3
Filhiol, Hypolite, and others	45	1
Fitzgerald, Michael G	1126	4
Flesschert, Martha E	1497	5
Fletcher, Nathan, heirs of	600	2
Flick, Catharine	1179	4
Flick, Catharine	784	3
Florence Masonic Lodge, Florence, Ala	601	2
Flowers, Elizabeth	661	2
Forgey, James	1386	5
Fourth of July claims	38	1
Fourth of July claims	1248	4
Fraliex, Martin, estate of	660	2
Franklin, William A., executor of J. B	1272	4
Frasuer, Eli	660	2
Frederick, Md., refund of money to	520	2
French, Henry S	82	1
Frizell, James S	155	1
Frobel, Elizabeth D. and Anna S	140	1
Fuller, J. B	648	2
Fuller, Robert W	1025	4
Fusilier, Corinne Perret	831	3
Gallagher, Charles	712	3
Gallagher, Charles	713	3
Galland, Washington	116	1
Gallott, Julia	832	3
Gardner, Fannie E	1585	5
Garrett, W. F	1281	4
Garrison, Nemiah	111	1
Garrison, Silas M	936	3
Garrot, Pierre	1428	5
Gibson, William F	238	1
Giddings, Napoleon B	227	1
Gilbreath, Simeon	1283	4
Gilfoil, Patrick	829	3
Gillett, Theodore J	1386	5
Gittings, Samuel E	1423	5
Glassie, D. W. and Minna H	85	1
Gomez, Edwin	398	2
Goodloe, Mariam, and others	1481	5
Goodrich, A. E. and M. E	832	3
Govan, J. J	658	2
Graves, Mrs. C. H	78	1
Green, Edman	1538	5
Greenhill, Thomas C	650	2
Gregory, James A	156	1
Grimmett, Matthew H	1271	4
Grisson, Sarah	653	2
Grivot, Maurice, heirs of	376	2
Grivot, Maurice, heirs of	1427	5
Groom, William G	139	1
Groves, John H	1165	4
Guidry, Lesant, heirs of	831	3
Gullory, Martin	832	3
Gummo, John W	1813	7
Hackney, B. R	321	1
Hagerstown, Md	746	3
Haigh, A. V	1042	4

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Hall, Warren.....	53	1
Haller, Jonathan.....	1361	5
Hamilton, G. Dwight.....	784	3
Hamm, John M.....	375	2
Hammon, Jacob.....	1277	4
Hancock, William.....	784	3
Handlin, William W.....	1364	5
Harding, Francis E., estate of.....	431	2
Harkins, Charles.....	1370	5
Harris, Thomas D., heirs of.....	1383	5
Harter, Thomas O.....	103	1
Hartman, Jesse P.....	849	3
Harvill, Mrs. L. J.....	315	1
Hathaway, John R.....	651	2
Havens, Ezra S.....	721	3
Hayes, Samuel, deceased.....	114	1
Hayford, Axel.....	1272	4
Haywood, Mrs. W. Dallas.....	69	1
Hazen, G. M., and others.....	661	2
Heard, James A.....	934	3
Heberer, John.....	650	2
Heberlein, August, estate of.....	608	2
Hebert, Eliza E.....	1270	4
Hebron, Adeline L., estate of.....	54	1
Heiskell, Ann E.....	649	2
Henderson, Robert.....	143	1
Henkel, Philip.....	1183	4
Henry, William M.....	1199	4
Henson, Hugh M.....	319	1
Hernandez, Vidal.....	42	1
Herr, A. H., estate of.....	745	3
Hickman, M. T.....	463	2
Higgins, John M.....	1279	4
Higgins, Richard, estate of.....	605	1
Higgins, Thomas L.....	658	2
Hildreth, William W., deceased.....	275	1
Hill, Alexander, estate of.....	36	1
Hill, Joseph A.....	832	3
Hobbs, Thomas M.....	659	2
Hoffman, R. H.....	1724	7
Holbrook, Julia.....	322	1
Holland, James L., estate of.....	659	2
Holmes, Martha W.....	1271	4
Holsten Female College.....	1412	5
Holt, C. G., administrator of Wiley.....	1272	4
Holt, John M.....	661	2
Honeycutt, Stephen M.....	1281	4
Hoover, Benjamin, estate of.....	850	3
Hoover, James C.....	784	3
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Greenhill, Thomas C	650	2
Gregory, James A	156	1
Guidry, Lesant, heirs of	831	3
Groom, William G	139	1
Gullory, Martin	832	3
Hall, Goff A	52	1
Hall, Warren	53	1
	1361	5
Hamilton, G. Dwight	375	2
Harvill, Mrs. L. J	651	2
Haywood, Mrs. W. Dallas	661	2
Heard, James A	650	2
Hebert, Eliza E	54	1
Heborn, Adaline L., estate of	649	2
Heiskell, Ann E	143	1
Henson, Hugh M	42	1
Higgin, Richard, estate of	658	2
Higgins, John M	605	2
Hildreth, William W., deceased	36	1
Hill, Alexander, estate of	832	3
Hill, Joseph A	659	2
Hoffman, R. H	322	1
Holbrook, Julia	659	2
Holt, C. G., administrator of Willey	661	2
Hopper, W. A., administrator of David	649	2
Hughes, William	48	1
Hughes, William H., administrator	43	1
Humphries, Julia A	149	1
Hurdle, Eunice	597	2
Interest on money expended in raising troops	555	2
Isgrig, Thomas C	412	2
Izard, Florimond	832	3
Jean, Francis, sr	832	3
Joiner, Nathan	1889	7

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Jones, Isaac and Thomas C., estate of	648	2
Jones, John H	597	2
Kennedy, Leonora J	832	3
Kentucky, Jefferson County, claims of certain citizens	374	2
Kerr, A. C	657	2
Kimmons, William M	597	2
Koons, Anthony	34	1
Labell, Charles	657	2
La Fayette College	650	2
Lafferty, James	658	2
Lafleur, Ben M	832	3
Lafleur, Jean Pierre	832	3
Lafleur, Marcelin	832	3
La Grange Synodical College	29	1
La Grange College	650	2
Lanier, N. B	649	2
Lastrapres, Victor	832	3
Leduff, Alexis	832	3
Leftwich, Gertrude A	28	1
Lemelle, Charles, estate of	832	3
Lemelle, Leon	832	3
Lemelle, Ludger, estate of	832	3
Lemelle, Rigobert, estate of	832	3
Lement, Pierre	832	3
Lewis, Abner D	658	2
Linn, Jane	152	1
Little Rock and Memphis Railroad Company	885	3
Logan, Mary T., widow of A. L	651	2
Long, Henry W	657	2
Loyal citizens of Loudoun County, Va	1018	4
Lutz, Andrew	141	1
Lynch, John A	1577	5
McBrayer, John H	1543	5
McClintock, Joseph B	148	1
McConnell, C. J	419	2
McLellan, Leander C	1594	5
McLeod, Daniel, legal representatives of	797	3
MaNairy, Hugh	126	1
McNeill, John C	661	2
Maddox, Laura E	886	3
Madison Female Institute	1050	4
Magill, Lydia A., administratrix	323	2
Marsh, Samuel	151	1
Marshall, Levin R., executors of	260	1
Mastin, Claude H	150	1
Matlock, E. S., estate of	597	2
Meador, Zaddock	661	2
Meaher, Timothy, administrator of J. M	651	2
Meuillon, Alphonse	832	3
Meuillon, Lucien	832	3
Militia organizations, Missouri, claims of	695	3
Miller, James	662	2
Millet, Francis	359	2
Mitchell, James A	637	2
Mobile and Girard Railroad Company	341	2
Mobile Marine Dock Company	46	1
Moffitt, Alexander	31	1
Montgomery, Pearson C	30	1
	1647	7

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Murphy, James	649	2
Murray, Francis M	35	1
Neck, George, sr	832	3
Nevada	254	1
Nixon, Henry C	661	2
Okolona (Miss.) Independent Order of Odd Fellows	648	2
Oregon	254	1
O'Shea, P. T	649	2
Paillett, Hilliare, estate of	832	3
Parish, J. W	430	2
Parker, Rebecca V., estate of	832	3
Patterson, David K	648	2
Pelletor, E. W	651	2
Phillips, John C	1890	7
Poitevent, William T	1652	7
Pollard, A. W	128	1
Pitzer, T. T	1409	5
Rabot, Jean Baptiste	832	3
Reeves, George W., estate of	659	2
Rhea, John L., executor of Samuel	358	2
Rhodes, John, and wife	144	1
Rice, W. H	650	2
Ripley, E. W., estate of	832	3
Ritchie, Cordelia A	796	3
Robb, William N	1544	5
Robertson, Mary H. S	51	1
Rose, Merritt	154	1
Rudd, J. C	142	1
Sammis, John S	145	1
Sanders, David B., estate of	27	1
Sanders, W. W., deceased	832	3
Sanford, Martha Ann	658	2
Scanlan, Mrs. W. H	830	3
Schaumburg, James W	344	2
Schaumburg, James W., legal representatives of	1405	5
Scott, John D	659	2
Scott, Samuel	649	2
Sessions, Franklin	648	2
Shacklett, H. W	504	2
Sheely, Ann	829	3
Shelby, J. C	1221	4
Sigur, John A	831	3
Simmons, J. W	659	2
Sims, James	418	2
Smith, A. J	651	2
Smith, Nancy C	597	2
Smith, Sarah E. B	1647	7
Smith, Vasti	661	2
Solair, Fannie	829	3
Sparks, D. M., estate of	651	2
St. Charles, Mo., St. Charles College	215	1
Stiff, Martha	1387	5
Stirman, Thomas V., deceased	157	1
Stovall, J. H	48	1
Stores and supplies, claims for	1552	5
Strickland, Jesse H	217	1
Summer, Margaret	649	2
Tate, Sally Sterrett	147	1
Morin, Catherine, heirs of	33	1

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Thorne, John D	146	1
Travis, W. C. M	130	1
Traweek, Mrs. E. L	657	2
Turner, Zeph	534	2
Unsell, David, estate of	43	1
Valleau, Sarah J	832	3
Vaughan, W. H	155	1
Verdin, Romain, estate of	831	3
Vignes, Polona	832	3
Walker, Julius	659	2
Wallace, Thomas	658	2
Ware, Henry	44	1
Warterfield, P. F., deceased	1131	4
Watkins, Nancy	650	2
Webb, William S	650	2
Whitaker, William	649	2
Wilhite, H	1891	7
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	1393	5
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Hall, Minnie	531	2
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Kelly, Elizabeth	65	1
Mailloux, Belle Carlton	1085	4
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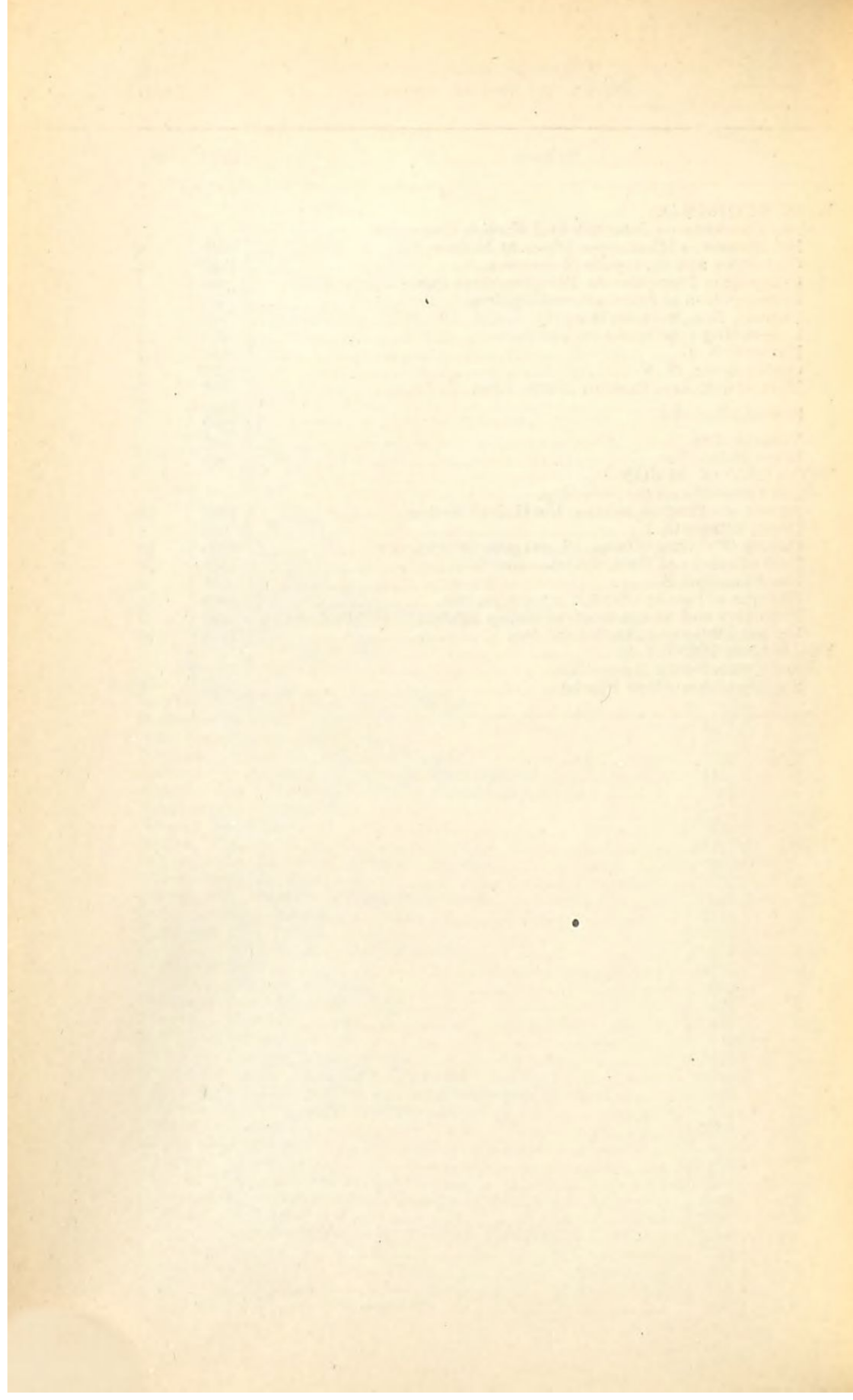
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Beshears, Alvis	158	1
Bevins, Samuel	208	1
Board of review	1074	4
Bourke, John G	1137	4
Bovell, John V	193	1
Boyd, Orsemus B	751	3
Brooks, S. J	1797	7
Buckner, Benjamin F. (or Taylor)	196	1
Burdette, John C	206	1
Casey, Peter	194	1

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Gage, E. Darwin	1203	4
Hanson, Willis F	2033	10
Hershe, Benjamin F	201	1
Horn, Fritz	200	1
Huse, Caleb	209	1
Jackson, George	2034	10
King, Orris O	197	1
McFarland, James A	204	1
Murray, Joseph	195	1
Schlapp, August	202	1
Scott, Austin A	198	1
Sheehy, Michael	199	1
Simpson, Isaac S	207	1
Thompson, George W	2125	10
Workman, Thomas C	192	1
Wright, Henry H	210	1
Wright, Henry H	203	1
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Anderson, Samuel S	1783	7
Askew, John J	2029	10
Athon, Levenia D	1930	7
Aubrey, Andrew J	1983	10
Bacon, Mary L	1762	7
Barnard, Anna E	2076	10
Belger, Fanny N	1786	7
Bell, Luman	2089	10
Bethards, Henry J	975	4
Birch, William A	223	1
Bolings, Samuel J	222	1
Bradford, Joseph J	1710	5
Bridges, Rebecca	1982	10
Briggs, Samuel G	1949	7
Brown, Elisha	1861	7
Burrough, William	743	3
Burton, Felix	1843	7
Byrd, Susan C	1932	7
Calhoun, Maggie E	1715	7
Campbell, Nancy	1782	7
Campbell, Robert S	1757	7
Carpenter, Ellen	2047	10
Chapman, Edward R	902	3
Churchill, Benjamin	976	4
Clark, George W	2031	10
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Craig, Joseph.....	1992	10
Crawford, Elizabeth R.....	336	2
Dally, Abraham.....	1709	7
Davis, James A.....	339	2
Davis, Susanna.....	1838	7
Day, Cornelius.....	1997	10
Dean, John A.....	1863	7
Donnelly, Peter.....	805	3
Dunn, Philip G.....	1714	7
Dyall, James R., widow of.....	1978	10
Falkner, Nathan.....	1760	7
Farquharson, Mrs. S. A.....	1785	7
Fisher, Samuel O.....	55	1
Fields, John.....	2030	10
Frazier, Stark.....	679	2
Goodwin, Miles.....	1051	4
Graham, Amelia.....	1981	10
Granberry, Joseph J.....	1765	7
Hall, Jacob.....	1834	7
Harley, Elizabeth.....	1835	7
Hollis, Mary.....	1994	10
Jergins, Jesse J.....	1777	7
Jobe, Lavina.....	1711	7
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Kirtley, James W.....	1716	7
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Lane, Lewis.....	221	1
Lang, D. M.....	899	3
Larnard, Helen.....	2116	10
Luttrell, Samuel.....	1961	10
Lyon, Harry.....	1948	7
McElvey, Harmon H.....	489	2
Malloy, John.....	1996	10
Matlock, John.....	2032	10
Menefee, Mary A.....	1712	7
Mercer, John.....	900	3
Merritt, Henry.....	1778	7
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Morgan, Benjamin.....	1977	10
Murphy, Susan S.....	1979	10
Nindemann, William F. C.....	981	2
Owen, L. D.....	1931	7
Pierce, Eliza B.....	1837	7
Prator, John D.....	1776	7
Ramey, Jonathan.....	488	2
Reed, David.....	806	3
Renfro, Nancy E.....	224	1
Riggs, Reuben.....	1713	7
Rowland, Thomas J.....	1964	10
Russell, William.....	1833	---
Sanderson, Louis G.....	1995	10
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Smith, James	1781	7
Staley, Noah	337	2
Tendoy, Chief of Bannock, Shoshone, and Sheepeater tribe of Indians	1830	7
Thomas, Edward	680	2
Trimble, Mary E	1862	7
Tucker, Thomas	1998	10
Turner, Margaret	56	1
Ware, Perry G	973	4
Watson, William M	1719	7
Webster, Amelia R	804	3
White, George W	487	2
White, Jeremiah	1761	7
Woodward, William S	485	2
Worthington, Betsey	486	2
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Anderson, Mary H., widow of Hiram	1370	5
Ashe, John Baptiste, legal representatives of	1132	4
Athens, Ala., Cumberland Presbyterian Church of	310	1
Blackistone, Richard P	1362	5
Brooks, William H. H	1488	5
Burks, William H. H	1488	5
Cartersville (Ga.) First Baptist Church	292	1
Clark, James S., estate of	377	2
Dalton, Ga., trustees of Catholic church	291	1
Delahoussage, Sidonie	1370	5
Deslonds, Mrs. Frank	1370	5
Dunklee, William M., administrator	1251	4
Edwards, Emily	1375	5
Fletcher, Nathan, heirs of	600	2
Florence (Ala.) Masonic Lodge	601	2
Garrison, Nemiah	111	1
Grivot, Maurice, heirs of	376	2
Harding, Francis E., estate of	1370	5
Huntsville (Ala.) Methodist Episcopal Church	264	1
Johnnot, William, and others, legal representatives of	1133	4
Kendall, William, legal representatives of	361	2
Lipscomb, James C	1268	4
Mount Zion Society	439	2
Newman, James M	524	2
Nichols, Frank H., estate of	243	1
Perry, O. H., administrator, George W	1801	7
Poullain, Mildred P	417	2
Refund of moneys collected by the United States	1363	5
Rogers, Benjamin F	244	1
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Stoddart, Alexander	261	1
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Port of delivery, Council Bluffs, Iowa.....	507	2
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EMMA JOHNSON.

MAY 6, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CARTER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8298.]

The Committee on Invalid Pensions have considered the bill (H. R. 8298) granting a pension to Emma Johnson, blind and dependent daughter of Daniel D. Johnson, deceased, and submit the following report:

The records of the War Department show that Daniel D. Johnson served as captain of Company B, One hundred and forty-second New York Volunteers, from September 29, 1862, to October 24, 1863, when he resigned because of disability. This soldier died in 1884, leaving a widow, who died in 1887, and it appears that no pension is being paid on account of this soldier.

Maria J. Wallace, of Gouverneur, N. Y., testifies that she is the sister of the petitioner who is the daughter of the soldier; that he died in 1884; that the petitioner's mother died in 1887; that their parents left no property; that the petitioner is 48 years of age; has been entirely blind for forty-two years, and is entirely dependent on others for support; that she lives with and is supported by this deponent, and has been subject to epileptic attacks for twenty-five years.

Mrs. Cornelia A. McFalls testifies that the petitioner is the daughter of the soldier; that she has no property, is unmarried, and that no one is bound to support her; that her father and mother are dead; that she has been blind since she was 5 or 6 years of age; that she has been subject to epileptic attacks for many years; that deponent's husband was petitioner's physician for a long time.

G. S. Conger testifies that the petitioner is the daughter of the soldier; is entirely blind and dependent on others for support; that her father and mother are dead, and she lives with her sister, Mrs. Wallace; is in poor health, and has no property.

In view of the permanently helpless condition of the petitioner, your committee recommend that the bill do pass, after being amended as follows:

In lines 5 and 6 strike out the words "of twelve dollars per month, subject to the limitations and provisions of the pension laws," and insert in lieu thereof the words "to which she would be entitled under the act of June 27, 1890, if she were still a minor."



MARY F. PARKER.

MAY 6, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FLICK, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7667.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 7667) granting a pension to Mary F. Parker, submit the following report:

The applicant, Mary F. Parker, is the widow of George W. Parker, late a private of Company B, Second Battalion District of Columbia Volunteers, war of the rebellion. George W. Parker enlisted April 15, 1861, and was discharged July 11, 1861, having served a period of eighty-eight days.

Mrs. Parker applied for pension, which was rejected on the ground that her husband had not served ninety days. She made ample proof, as your committee believes, that her husband contracted disabilities in the service from the effects of which he died, but she could not obtain a pension owing to the fact that her husband was discharged two days before the expiration of ninety days from the date of his enlistment. She is still unmarried, is destitute, earning her support by daily labor.

Your committee recommend the passage of said bill after amending the same by striking out the word "twelve" in the eighth line and inserting the word "eight," and at the end of the bill add the words "subject to the limitations and provisions of the pension laws."

MARY VENARD.

MAY 6, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 4283.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4283) to pension Mary Venard, a hospital nurse, have had the same under consideration and submit the following report:

The records of the War Department show that the claimant entered into service February 11, 1863, and was attached as nurse to No. 4 general hospital, Nashville, Tenn., serving therein until on or about June 26th, 1863; that she was on duty at No. 20 general hospital, Nashville, Tenn., from on or about June 26th, 1863, until on or about July 31, 1863; and that she was attached to general hospital, Natchez, Miss., October 7th, 1863, and was discharged October —, 1864, exact date of discharge not known.

George M. Allen, in a recent affidavit, says:

She is now almost helpless, having little use of her right hand. Although her father was pensioned for service in the war of 1812, Miss Venard declined to receive it after his death, being then able to support herself. She is now in reduced circumstances and I believe her to be fully entitled to a pension.

Levi G. Beirson, in an affidavit, after showing her hospital service, says:

She is now almost helpless. Her right hand is crippled from a fall some years ago. She is in reduced circumstances and needs aid.

A number of affidavits made by reputable people who have known the claimant many years fully corroborate the records of the War Department as to length of service and efficiency of her labors while so employed.

Your committee recommend the passage of the bill, amended, however, by inserting "army nurse" immediately after name "Mary Venard," in line 4, so that it will read "Mary Venard, army nurse."

MARY A. MOORHEAD.

MAY 6, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KRIBBS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7510.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 7510) for the relief of Mrs. Mary A. Moorhead, submit the following report:

The claimant in this bill is Mrs. Mary A. Moorhead, who served under her maiden name of Mary A. Little as a nurse in Finley Hospital during the war of the rebellion from May 1, 1864, to June, 1865. The records of the War Department, as set forth in a letter from Maj. Ainsworth to your committee, shows that "Mary A. Little (now Moorhead) was attached to Finley Hospital, Washington, D. C., May 1, 1864, and was on duty at that hospital to include December 31, 1864."

There are also on file with your committee statements under oath by Mrs. Anna Wittenmeyer and Ellen M. Watson, who were connected with the Christian Commission during the war, and who knew the claimant and saw her in the hospital from sometime in 1864 until the close of the war in June, 1865, and that she was a faithful and competent nurse. The claimant's own affidavit to the same effect is also before your committee. A personal statement in writing from Hon. John Dalzell, who introduced this bill, says:

I beg leave to impress on you, so far as I can by my own testimony, the justice of the bill for the relief of Mary A. Moorhead, who was a nurse during the war. She is exceedingly needy as well as worthy, and she is needy now. What she ought to have is present aid.

Your committee returns this bill with the recommendation that it do pass.

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LEGAL REPRESENTATIVES OF JOSEPH A. MOWER.

MAY 6, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 7617.]

The Committee on War Claims, to whom was referred the bill (H. R. 7617) entitled "A bill for the relief of the legal representatives of Joseph A. Mower," report that Joseph A. Mower served as an enlisted man in Company A, Engineers, U. S. Army, from June 10, 1846, to July 24, 1848; next as a commissioned officer in the regular Army from June 18, 1855, to January 6, 1870. During all the time he served as such commissioned officer the following provision of law was in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

He was paid for his services while he thus served as a commissioned officer in the U. S. Army merely what other officers of his grade were generally paid, and he was paid or allowed no increase of compensation whatever for his services as a commissioned officer in the U. S. Army prior to January 6, 1870, on account of his said prior length of service therein as an enlisted man. For this reason it is alleged he was short-paid for his services as a commissioned officer prior to January 6, 1870, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists, or may exist, to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price, thus put in controversy, of the one additional ration per diem for every five years of prior service computes to about the sum of \$800, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services rendered by a distinguished officer); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is "that the claimants may go before a competent tribunal and prove the justness of their claim if they can."

The committee recommend that the bill do pass.

CAPT. WILLIAM C. KNOWLTON.

MAY 6, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HULL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 4215.]

The Committee on Military Affairs have considered the bill (H. R. 4215) to correct the military record of Capt. William C. Knowlton, and submit the following report:

The War Department records show that William C. Knowlton was mustered into service as first lieutenant Company D, Seventh New Hampshire Volunteers, to date November 6, 1861; as captain to date November 7, 1863, and transferred to Company C of said regiment. He was dismissed the service by sentence of general court-martial January 1, 1864. He was charged with drunkenness on duty while acting as regimental officer of the day December 22, 1863, in that he invited an enlisted man to his tent, furnished him with intoxicating drinks and drank with him, and indulged in riotous, boisterous, and disgraceful conduct in his tent. The court-martial found him guilty as charged except as to the words "riotous and boisterous," and he was accordingly cashiered.

The petitioner states that this charge was the result of a conspiracy on the part of two officers of his regiment, Lieut. Leander W. Fogg and Lieut. George F. McCabe, who, being jealous of his promotion to captain, entered his tent with professions of friendship, urged him to drink with them in honor of his promotion, and produced a bottle of liquor. The petitioner reluctantly yielded, drank sparingly of the liquor, which he now believes was drugged; that he was made insensible, and thereupon charges against him were formulated.

In support of the petitioner's allegation, he furnishes the sworn testimony of George Smith, who was a private in Company K, Seventh New Hampshire Volunteers, who testifies that he has no hesitation in saying that Capt. Knowlton was the victim of a deliberate conspiracy, and that he was drugged; that he heard Lieuts. Fogg and McCabe chuckling over the success of their plot, and heard Fogg say "McCabe, that dose had a splendid effect on Knowlton."

Moses A. Hunkins testifies that he was in Knowlton's tent when McCabe and Fogg came in with a bottle of liquor and urged him to drink, which he finally did, and became intoxicated. He could not stand liquor, and his visitors knew it, and as a result of this incident he was court-martialed and cashiered; that witness testified at the court-martial and has never believed the sentence just, and it was the general talk that he was the victim of a conspiracy.

G. A. Curtice, who was captain of Company D, testifies to the worth

and efficiency of the petitioner as an officer, and states that Lieuts. Fogg and McCabe carried whisky to his tent and persuaded him to drink with them, and then used their influence to have him court-martialed. "It was a wicked and malicious proceeding, done with the deliberate intention of getting him court-martialed; he is, and has been since the war, a temperate man."

George W. Gould testifies that he was familiar with the matter, and has no hesitation in saying that the result of the court-martial was unjust to Capt. Knowlton; he was an honorable man, a good soldier and officer.

Seth T. Hill testifies that he has known the petitioner since 1856; that he never knew a more industrious, upright, sober, and effective workman; that his conduct since the war has been the same—sober, honest, industrious, excellent—working for the same company that employed him before the war.

A petition signed by eleven members of the Seventh New Hampshire Infantry requests that an honorable discharge be granted the petitioner.

Ex-Governor James A. Weston and ex-Governor Smyth, of New Hampshire, certify from long acquaintance that Capt. Knowlton before and since the war has been a respected and honored citizen, his integrity and veracity unquestioned.

The committee recommend that the bill do pass.



LOUIS SEMMLER.

MAY 6, 1892.—Laid on the table and ordered to be printed.

Mr. BELKNAP, from the Committee on Military Affairs, submitted the following

ADVERSE REPORT:

[To accompany H. R. 3384.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 3384) for the relief of Louis Semmler, having considered the same, respectfully report:

The committee has examined the evidence presented with this case, and on the showing made does not consider the claimant entitled to the relief asked for under the provisions of this bill. The report of the War Department on this case, printed herewith as a part of this report, shows that the claimant was a civilian employé of the Government, and while acting as such was paid as per his contract with the Government at the rate of \$75 per month. There is no reason why this man, of the many thousands employed by the Quartermaster's Department during the war, should be granted this honor, and a right to a pension which it would confer. Believing this measure to be without merit the committee recommend that the bill do not pass.

Case of Louis Semmler.

RECORD AND PENSION DIVISION, *April 26, 1892.*

The name Louis Semmler, or similar name, has not been found on the rolls of Company K or any other company of the First United States Veteran Volunteer Engineers, nor has any evidence been found of the enlistment or muster into the military service of a man of that or similar name.

An application of Louis Semmler for a discharge certificate as of Company K, First United States Veteran Volunteer Engineers, was referred July 14, 1888, to the Quartermaster-General of the Army, who reported on the 20th of the same month as follows:

"Capt. John H. James, assistant quartermaster, Nashville, Tenn., reports Louis Semmley, a civilian carpenter, hired at Chicago, Ill., from March 24 to 28, 1865, at \$75 per month.

"Transferred to Capt. C. K. Smith, assistant quartermaster at Chattanooga, Tenn.
"Not reported by Capt. Smith.

"Capt. E. B. Kirk, assistant quartermaster, Chattanooga, reports Louis Leminberg, carpenter, transferred by Capt. James from March 29 to 31, 1865, at \$75 per month; and Lewis Leminberg, carpenter, from April 1 to 25, 1865, at same rate of pay.

"Transferred to Capt. Robert Wetherell, assistant quartermaster, Chattanooga, by whom he is reported as Lewis Leminberg, carpenter, from April 26 to May 21, 1865, at \$75 per month, with pay due from March 24, 1865.

"Transferred to Capt. E. Hade, assistant quartermaster, Chattanooga, as Lewis Lemingburg, and reported by that officer in same capacity and at same rate of pay, from May 22 to June 28, 1865, when discharged. Date of contract, March 24, 1865.

"He is reported on the transfers as having been hired at Chicago, Ill.

"Joseph E. Baker is reported by Cpts. Kirk and Wetherell as foreman of carpenters.

"The name of Louis Semmler is not found."

The application of Mr. Semmler for a discharge certificate was denied on the ground that he was a civilian employé of the quartermaster's department, and not entitled to a discharge.

Respectfully submitted.

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

The SECRETARY OF WAR.

O

CHRISTIAN SCHWARZ.

MAY 6, 1892.—Laid on the table and ordered to be printed.

Mr. BELKNAP, from the Committee on Military Affairs, submitted the following

ADVERSE REPORT:

[To accompany H. R. 5969.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 5969) for the relief of Christian Schwarz, having considered the same, respectfully report:

The committee has examined the evidence presented with this case and on the showing made does not consider the claimant entitled to the relief asked for under the provisions of this bill. The report of the War Department on this case is printed herewith as a part of this report, and from this military history of the claimant your committee can see no merit in the measure.

The committee recommend that the bill do not pass.

Case of Christian Schwarz, late of First Virginia Light Artillery.

RECORD AND PENSION DIVISION, *April 26, 1892.*

The record shows that Christian Schwarz was enrolled and mustered in as sergeant, Battery A, First Virginia Light Artillery, and as first lieutenant same battery, to date July 1, 1862.

Muster rolls from enrollment to June 30, 1862, report him present. July and August, 1862, absent on recruiting service. September and October, 1862, present for duty, and so borne to December 31, 1862. January and February, 1863, present, under arrest since February 25, 1863. March and April, 1863, dismissed March 13, 1865.

He was summarily dismissed the service in orders of which the following is a copy:

SPECIAL ORDERS, } WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
No. 113. } *Washington, March 9, 1863.*

[Extract.]

(4) The following officers are, by direction of the President, dismissed the service of the United States:

First Lieut. Christian Schwarz, First Virginia Artillery, for drunkenness and disorderly conduct in camp, assault on a brother officer by blows and foul language, resisting by force a sentinel who attempted to preserve order, breach of arrest, and absence without leave.

By order of the Secretary of War.

L. THOMAS,
Adjutant-General.

Under date of April 27, 1885, Mr. Schwarz addressed an application to the Secretary of War, praying that his dismissal be revoked and he be granted an honorable discharge, and was informed by this Department on July 3, 1885, that there was no authority of law to revoke the dismissal of an officer and grant him an honorable discharge, since which date the status of the case has not changed.

Respectfully submitted.

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

The SECRETARY OF WAR.

THIRD AND FOURTH CLASS MAIL MATTER.

MAY 6, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. CROSBY, from the Committee on the Post-Office and Post-Roads,
submitted the following

REPORT:

[To accompany H. R. 7022.]

The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 7022) for the consolidation of third and fourth class mail matter, submit the following report:

Under the present postal laws and regulations domestic mail matter is defined to be that which is sent in the mails from one post-office to another within the United States; and it is divided into four classes, namely, first, second, third, and fourth, described as follows:

First-class.—Written matter, namely, letters, postal cards, and all matter wholly or partly in writing, whether sealed or unsealed (except manuscript copy accompanying proof sheets or corrected proof sheets), is also of the first class. (P. L. and R., par. 321, 376.)

Second class.—Periodical publications, namely: All newspapers and other periodical publications which are issued at stated intervals and as frequently as four times a year, which bear a date of issue, are numbered consecutively, are issued from a known office of publication, and are formed of printed paper sheets without boards, cloth, leather, or other substantial binding. To be entitled to entry to this class, such publications must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, art, or some special industry; must have a legitimate list of subscribers, and must not be designed primarily for advertising purposes, or for free circulation or circulation at nominal rates. (P. L. and R., pars. 319, 327, 328.)

Third class.—Books, circulars, periodicals, and other matter wholly in print (not included in second-class matter), proof-sheets, corrected proof-sheets, and manuscript copy accompanying the same. (P. L. and R., par. 359.)

“Printed matter” is defined by statute to be “the reproduction upon paper, by any process except that of handwriting, of any words, letters, characters, figures, or images, or any combination thereof not having the character of an actual and personal correspondence.” (P. L. and R., par. 363.)

A “circular” is defined by statute to be “a printed letter, which, according to internal evidence, is being sent in identical terms to several persons;” and it does not lose its character as such by writing therein the date, name of the addressee or of the sender, or the correction of mere typographical errors. (P. L. and R., par. 460.)

By special law, seeds, bulbs, cuttings, roots, plants, and scions,

formerly in the fourth class, are now mailable at the third-class rate of postage.

Fourth class.—Merchandise and miscellaneous matter not embraced in the first, second, or third classes, which is not in its form or nature liable to destroy, deface, or otherwise damage the contents of the mail bag or harm the person of anyone engaged in the postal service.

The bill reported by the committee provides for the consolidation of the third and fourth-classes, so that all mail matter hereinbefore included in either of these classes shall in future be transported as third-class matter; the present rate on fourth-class matter being 1 cent an ounce. The reasons for this consolidation have long existed, and they appear to the committee to be sufficiently strong to warrant the passage of the bill as a desirable and expedient measure.

In the first place; the distinctions between the two classes are, in many cases, so shadowy and uncertain as to lead to great confusion in the various post-offices throughout the country. It is in many instances so difficult to ascertain to which class a given article belongs that one postmaster decides it to belong to one class while another postmaster holds that it belongs to the other class and subject to a different rate of postage. These vexatious questions are referred frequently to the Post-Office Department for final determination, and much delay, inconvenience, and annoyance is the result. So confusing and uncertain, and so entirely without any substantial reason therefor, are the distinctions between these two classes of matter that, in the opinion of your committee, if no other reason existed, the interests of consistency and the simplification of the service alone would require their prompt abandonment.

But the change provided for in the bill has a stronger reason for support. Its adoption will benefit every person who has occasion to use the mails for transporting small packages. Under existing regulations all parcels of fourth-class matter sent in the mails are limited to 4 pounds in weight. The average actual weight of these parcels, however, has heretofore been but little over $4\frac{1}{2}$ ounces, showing that the rate was practically prohibitory. It will thus be seen that the proposed bill, if enacted, will not only afford a cheap means of transporting these small packages, but that it will be of benefit, not to a class merely, but to all our people. It will be particularly advantageous to the people who live in rural districts, of whom there are millions who have no means of sending or getting packages by express or by other private conveyance outside of mail.

The change proposed by the bill, moreover, has been carefully considered for several years past, and has the indorsement of the Postmaster-General, as will be seen by an examination of his reports. In the report for 1889 he says:

The distinctions existing between mail matter of the third and fourth classes are not easily ascertainable. The third class embraces miscellaneous printed matter consisting of books, circulars, etc. The rate of postage is 1 cent for each 2 ounces. Fourth-class matter comprehends articles of almost every conceivable character not above 4 pounds in weight. The only restriction besides that of weight is that the article shall not be of such a nature as to injure the contents of the mail bag or to harm the person of the carrier. Postage is chargeable as 1 cent per ounce or fraction thereof. The shadowy distinctions between the two classes are a fruitful source of difficulty alike to the public and to the postal service.

The law officers of the Department are often at a loss in determining to which of the two classes certain matter belongs, and it is only to be expected that frequent disputes should arise between postmasters and their patrons on the subject. For instance, a postal regulation provides that samples of printed blanks shall be treated as third-class matter if designed to show the quality of the printing and as fourth-class matter if intended to show the quality of the paper. In most cases the matter

in both classes is of a commercial character, and there appears to be no good reason for making a discrimination in the charges for postage.

The carriage of fourth-class matter has proved to be of much benefit to people living in the rural districts and on the frontiers. To these the only way open to procure small articles from a distance is through the mails. The express offices are confined to the more populous localities. There is hardly a community in the land too insignificant to be visited by the mail pouch. This country, while more advanced in respect to other classes of mail matter, is more conservative in the use of the mails for the transportation of parcels. Official statistics show that in the aggregate of ten of the principal European countries the average charge for letters, reduced to our standards of value, is $5\frac{3}{8}$ cents to an ounce of written matter, our rate being 2 cents per ounce; for newspapers regularly issued it is $4\frac{1}{2}$ cents per pound, our rate being 1 cent per pound; for miscellaneous printed matter it is 6 cents per pound, our rate being 8 cents per pound; and on samples it is a little less than 6 cents, our rate for fourth-class matter, which includes samples, being 16 cents per pound.

* * * * *

The logic of the trifling average weight and small total of fourth-class matter carried is that the present rate of postage is prohibitory, and that the patronage from this class of matter arises more from necessity than from choice, because of the lack of other means of transportation. The express companies graduate their charges somewhat by distances, and they offer special inducements for packages not above the limit of weight fixed for admission into the mails. The result is that they get the short hauls, leaving the long hauls to the Government.

Two courses have been suggested: First, to consolidate third and fourth class matter, not increasing the weight of packages, reducing the postage to that of third class, which would be 1 cent for 2 ounces instead of 1 cent per ounce. The other course is to adopt the full parcels post, and carry, under certain regulations, packages not exceeding 11 pounds in weight at 1 cent per ounce. Continual and cogent reasons are presented from all parts of the country favoring one or the other of these propositions. There is undoubtably a desire among the people of all communities to be placed in direct communication with the markets of all the cities. While the express companies perform excellent service, they do not deliver goods to the smaller towns, villages, and cross roads enjoying post-office conveniences. The express companies carry packages to the larger towns, from which notification is sent to the smaller village, involving trouble and cost to such an extent that a constant pressure is brought to bear upon the Post-Office Department for relief.

Besides these statements of the Postmaster-General there will be found in his report for 1889 copies of letters received from many postmasters in different parts of the country, who are almost unanimous in their opinion that the consolidation of third and fourth class matter will be for the good of the service and in the interest of the public. In line with this the committee think it proper to introduce here a resolution passed at a convention of postmasters recently held in Washington, representing the post-offices at New York, Chicago, Philadelphia, Boston, St. Louis, San Francisco, Atlanta, New Orleans, and other large offices (at which in all is collected more than one-half of the entire postal revenue), advocating the reduction of postage on fourth-class matter to that which is charged for third.

The resolution was offered by Mr. Harlow, the postmaster at St. Louis, and is as follows:

Resolved, That the consolidation of third and fourth class mail matter into one class, with a uniform rate of postage, at one cent for each two ounces or fraction thereof, is a measure that is demanded by the interests alike of the public and the postal service, and the Postmaster-General is requested to communicate this resolution to the House Committee on the Post-Office and Post-Roads and to the Committee on Post-Offices and Post-Roads of the Senate.

It is only fair to state that the reduced rate of postage proposed by this bill on fourth-class matter would probably somewhat increase the amount of labor of postal employes; but it would not, in the opinion of the committee, overburden the mails by the sending of packages nearly or quite up to the limit of 4 pounds, for it appears in the annual report of the Postmaster-General for 1890, pp. 51 and 52, as also in his letter dated February 26, 1892, directed to Hon. John S. Henderson, chair-

man of the Post-Office Committee, which letter is made a part of this report, that "out of a total of 3,600,000,000 pieces of paid matter transmitted in the mails during the year 1890 only about 37,000,000 pieces, or a little more than 1 per cent, were fourth-class matter. The average weight per piece of this class was but a little over $4\frac{1}{2}$ ounces."

What the effect of uniting these two classes will have upon the postal revenue has been a source of some solicitude with the friends of the service, and it has given rise to careful consideration by the committee. The result of this is that, in the opinion of the committee, the consolidation will not reduce the revenues of the Government, but will eventually increase them. This opinion is shared by the officers of the Post-Office Department.

An estimate given in the Postmaster-General's report of 1890, pp. 50, 51, and 52, above referred to, shows that the number of pieces of third-class matter carried during the year ending June 30, 1890, was about 477,000,000, while the number of pieces of the fourth class was about 37,000,000, or only about 7 per cent of the third class. From this statement it appears that the income from fourth-class matter for that year was about \$1,800,000; and if the same quantity had been carried at third-class rates of postage the entire postal revenue, which is about \$61,000,000, would have been reduced about \$900,000.

Your committee believe, however (and this opinion is confirmed by that of the Postmaster-General and many good authorities), that if the consolidation is made the increase of matter that will be carried will not only overcome the difference in income above mentioned, but will swell the revenue of the postal service very largely over all additional expenses incurred thereby.

It is estimated that the cost of handling all classes of mail is between 6 and 7 cents a pound. If this be true, the reduction of the rate on fourth-class matter to 8 cents a pound will afford a small profit. It will certainly pay for its cost, however, to say nothing of a profit; and in the opinion of the committee it is the duty of the Government, in its conduct of the Post-Office Department, to increase its facilities as the convenience and accommodation of all the people may require; and the advantages growing out of such a policy, to accrue to that large class of our citizens who have hitherto got the least benefit from the postal service—that is, the people living in rural districts and sparsely settled parts of the country—should be a cogent reason for giving this policy constant encouragement and support. Speaking generally, however, whatever postal measure will save our people inconvenience and annoyance, and give them cheaper rates of postage, should be adopted, provided it will not work injuriously to the Government itself.

The wisdom of the change now under consideration has become so apparent that the Postmaster-General, in his last annual report (1891), unhesitatingly recommends it in the following forcible language:

I am inclined, upon a mature consideration of all these things, to think that the time has arrived when some change tending to a greater simplicity in the classification of mail matter and the rates of postage is demanded; and I do not believe that a better beginning could be made than by abolishing the distinction between third and fourth class matter and uniting them under one rate of postage. In the interest of simplicity and public convenience alone, as is demonstrated by the foregoing statement, such a union is very desirable. A right step has already been taken by Congress. By the act of July 24, 1888, the rate of postage on seeds, roots, bulbs, scions, and plants was reduced from the merchandise rate to that of the third class in the general interest of agriculture. Why, in the general interest of manufactures and of domestic commerce, allied as these are to all the other pursuits of life, should not a further advance toward unification be made.

I beg leave to state that the mails are not greatly burdened now with articles of

fourth-class matter, the rate of postage being so high as to interfere materially with the inclinations of the people to patronize this branch of the postal service. In my annual report of last year a table was published which showed that out of over 3,600,000,000 pieces of paid matter of all kinds transmitted in the mails during the year, only 37,000,000 pieces, a trifle over 1 per cent of the whole, were fourth-class matter. Even if this number were doubled or trebled by a reduction in the rate of postage, the burden upon the postal service thereby resulting would be light. Finally, I regret to say, in nearly every other country in the world the rate of postage on parcels is less than it is in the United States. On letters and newspapers the reverse is usually the case; and in our own country the anomaly exists that on merchandise mailed to the other countries under parcels-post arrangements, the rates and conditions of transmission are much more favorable than on matter for domestic delivery. I respectfully recommend that Congress be requested to amend the present law so as to place what is now known as fourth-class matter in the third class.

In the letter of the Postmaster-General, dated February 2, 1892, addressed to the chairman of this committee and hereinbefore referred to, the necessity for the proposed bill is so clearly set forth that your committee beg leave to make it a part of this report. They also append an interesting table, taken from the Postmaster-General's report for 1889, showing by statistics obtained from forty representative post-offices the proportions of first, third, and fourth class matter dispatched in the domestic mails by gross number and weight, as well as the percentages thereof, and the average weight per piece.

For the reasons above stated, and in view of the fact that thousands of citizens all over the country, besides many trade organizations, have earnestly advocated the change of law under consideration, while nobody seems to oppose it, the committee believe the bill to be a politic and desirable measure, and they therefore recommend its passage.

[Letter of the Postmaster-General advocating the consolidation of third and fourth class matter.]

OFFICE OF THE POSTMASTER-GENERAL,
Washington, D. C., February 2, 1892.

SIR: I have the honor to acknowledge the receipt of your communication submitting a printed copy of a bill (H. R. 383) to reduce postage on fourth-class matter, and calling upon me for information and suggestions relating thereto. In compliance with this request I beg to submit the following:

The bill, in effect, merges third and fourth class matter into one class, chargeable at the present rate of postage for third-class matter, that is, 1 cent for each 2 ounces or fraction thereof.

What is known as fourth-class matter was introduced into the mails for the manifest purpose of affording to the people the means of obtaining many small articles which contribute to the convenience and comforts of life. The advantage of having small parcels carried in the mails is almost incalculable to those who live in thinly settled districts and are without the means of private transportation. If the private express system extended all over the country there would be no necessity, and probably little inclination, to make use of the mails for the transportation of articles of merchandise, the express charges upon a 4-pound package being usually less than half the amount of postage required upon it at the present rate. The fact is, furthermore, that the great majority of small towns have no express facilities. At such places the Government has a virtual monopoly of the carriage of fourth-class matter, and under the existing rate uses this monopoly to work hardship upon the very class of people who are most entitled to its consideration. The excessive charge upon this class of matter thus defeats the very object for which it was admitted to the mail—the universal accommodation of the people.

It can not be truthfully urged as a defense for the present rate that the bulk of the fourth-class matter mailed consists of packages nearly or quite up to the 4-pound limit of weight, burdening the mails and requiring an extra amount of labor upon the part of postal employes. In a table published in my annual report for 1890 (pp. 51 and 52) it is shown that out of a total of over 3,600,000,000 pieces of mail matter transmitted in the mails during the year only about 37,000,000 pieces, or little more

than 1 per cent, were fourth-class matter. The average weight per piece for this class of matter was but little over $4\frac{1}{2}$ ounces.

In the changes made by postal legislation there has been an evident discrimination against the fourth-class matter. An ounce of written matter may be mailed at one-third the amount charged a few years ago; on second-class matter and on the main articles now included in the third class the postage has been reduced one-half. On the principal articles of fourth-class matter, however, the rate is the same as when they were admitted to the mails, and on some articles there has been an increase.

A comparison made not long ago of the charges on the various classes of mail matter in the United States with those of ten leading countries of Europe showed that their average charge for letters is nearly three times our rate; for newspapers, four and one-half times our rate; for miscellaneous printed matter, three-fourths our rate, and for samples of merchandise it was only three-eighths of our rate. Again, under the parcels-post system articles of merchandise not exceeding 11 pounds in weight may be sent to certain South American countries upon prepayment by the sender of postage at the rate of 12 cents a pound. A parcel of the fourth class when sent in the domestic mails is limited to a weight of 4 pounds, and must be prepaid at the rate of 16 cents a pound. It is not to be questioned that every possible encouragement should be given to the sale of our productions, both at home and abroad; but the obligation of the Government surely is greater for furnishing facilities to purchasers in our own country rather than to citizens of other nations.

By uniting into one class third and fourth class matter many difficulties which constantly arise in distinguishing between matter belonging to the respective classes would be removed. Oftentimes the proper classification of a certain article is doubtful to the law officers of the Government, and postmasters can not be expected to fix accurately the proper rate upon all articles embraced in the third and fourth classes of mail matter. Cases which postmasters are unable to decide, or where their ruling is questioned, are daily being submitted to the Department for decision. This necessarily causes in many instances vexatious delay and inconvenience, and perhaps injustice, as in a doubtful case the tendency is to impose the higher rate. By a consolidation of these two classes of matter the work of postmasters would be greatly facilitated, and many complexities and inconsistencies done away with.

There appears to be no good reason for admitting to the mails at the third-class rate printed circulars, legal and insurance blanks, while printed blotters, letter heads, and bill heads are held to be fourth-class matter; or for the rule that a Christmas or birthday card when printed on paper is third-class matter, but when printed on any other material is subject to the fourth-class rate. The wisdom of the act of Congress approved July 4, 1888, reducing the rate on seeds, cuttings, bulbs, roots, scions, and plants will not be questioned. The charge on other articles of merchandise of a doubtful rate of postage seems, however, to be an unfair and unreasonable discrimination. Moreover, from the comparisons and statistics given above it is shown that the present fourth-class rate of postage is practically prohibitory, and that the patronage of the mails for this class of matter arises from necessity rather than from choice.

It has already been seen that the average weight of the pieces of fourth-class matter mailed during the year ending June 30, 1890, was only a little more than $4\frac{1}{2}$ ounces, and the total weight of fourth-class matter was only 3,950,771 pounds, or about 3 per cent of the estimated total weight of the mails. The reduction of the rate, as contemplated by the bill, would undoubtedly give to the mails the benefit of the "short haul" on a great deal of matter which is now carried by competing private transportation lines; and in this way there would no doubt be in the end a very considerable increase of the revenue without involving a corresponding augmentation of expense. The Government would be the gainer and the public would be largely benefited by the proposed measure.

I am unhesitatingly in favor of the consolidation of third and fourth class matter, as proposed by the bill, and I submitted a recommendation to that effect in my last annual report. I desire, however, to submit a modified draft for a bill designed to better accomplish the purpose in view, and I would suggest that this be adopted as a substitute for the one under consideration.

I have the honor to be, very respectfully, your obedient servant,

JNO. WANAMAKER,
Postmaster-General.

Hon. JNO. S. HENDERSON,
Chairman Committee on the Post-Office and Post-Roads.

CONSOLIDATION OF THIRD AND FOURTH CLASS MATTER.

Condensed statement of count and weight of mail matter dispatched on the 22d and 23d of October, 1889, at ten of principal first-class offices, ten of principal second-class offices, ten of principal third-class offices, and ten of principal fourth-class offices.

TOTALS TO ALL DISTANCES.

	Number of pieces.	Number of pounds.	Average weight per piece.	Average distance in miles per piece to which carried.	Percentage of total number of pieces of each class of mail matter to total of all classes.	Percentage of total number of pounds of each class of mail matter to total of all classes.
<i>At 10 first-class offices.</i>						
			<i>Ounces.</i>			
1. Letters	3, 248, 666	66, 318	.3 +	419	56.2 +	18.9 +
2. Postal cards	496, 865	2, 609	.08	344	8.6 —	.7
3. Wrapped parcels under seal at letter rate...	6, 935	2, 087	4.8 +	419	.1 +	.6 —
4. Third-class matter	1, 946, 106	239, 203	1.9 +	612	33.6 —	68.4 +
5. Fourth-class matter	96, 478	39, 140	6.5 —	612	1.7 —	11.2 +
Total	5, 795, 050	349, 357	.9 +	447	96.8 +	96.8 +
<i>At 10 second-class offices.</i>						
1. Letters	109, 212	3, 064	.4 +	327	69.5 +	29.5 +
2. Postal cards	26, 826	140 ⁴ / ₁₀	.08	282	17.0 +	1.3 +
3. Wrapped parcels under seal at letter rate...	1, 897	666	5.6 +	469	1.2 +	6.4 +
4. Third-class matter	14, 662	3, 000	3.2 +	245	9.3 +	28.9 +
5. Fourth-class matter	4, 442	3, 504	12.6 +	364	2.8 +	33.7 +
Total	157, 039	10, 374 ⁴ / ₁₀	1.0 +	314	2.6 +	2.8 +
<i>At 10 third-class offices.</i>						
1. Letters	21, 053	397	.3 +	281	80.4 +	49.4 +
2. Postal cards	3, 419	17 ² / ₁₀	.08	206	13.0 +	2.2 +
3. Wrapped parcels under seal at letter rate...	61	19 ¹ / ₄	5.0 +	454	.2 +	2.4 +
4. Third-class matter	1, 282	211	2.6 +	244	4.9 —	26.3 +
5. Fourth-class matter	365	156	6.8 +	376	1.5 +	19.3 +
Total	26, 180	801 ³ / ₁₀	.5 —	265	.4 +	.2 +
<i>At 10 fourth-class offices.</i>						
1. Letters	3, 640	70	.3 +	233	65.7 +	53.4 +
2. Postal cards	966	5 ² / ₁₀	.08	133	17.4 +	3.8 +
3. Wrapped parcels under seal at letter rate...	14	4	4.6 —	130	.2 +	3.0 +
4. Third-class matter	875	33	.6 +	41	15.8 +	25.2 +
5. Fourth-class matter	41	19	7.4 +	226	.7 +	14.5 +
Total	5, 536	131 ³ / ₁₀	.4 —	185	.09 +	.03 +

Recapitulation of the 40 offices.

1. Letters	3, 382, 571	69, 849	.3	386	56.5 +	19.3 +
2. Postal cards	528, 076	2, 772 ⁵ / ₁₀	.08	339	8.8 +	.7 +
3. Wrapped parcels under seal at letter rate...	8, 907	2, 776 ¹ / ₄	-----	430	.1 +	.7 +
4. Third-class matter	1, 962, 925	242, 447	1.9 +	558	32.8 —	67.2 +
5. Fourth-class matter	101, 326	42, 819	6.7 +	599	1.7 —	11.8 +
Grand total	5, 983, 805	360, 663 ³ / ₄	.9 +	442	-----	-----

Condensed statement of count and weight of mail matter dispatched on the 22d and 23d of October, 1889, at ten of principal first-class offices, etc.—Continued.

SENT NOT EXCEEDING 50 MILES.

[Average distance, 25 miles.]

	Number of pieces.	Weight in pounds.	Per- centage of whole number of pieces.	Per- centage of total weight.	Average weight per piece.
<i>At 10 first-class offices.</i>					
					<i>Ounces.</i>
1. Letters	648,083	11,773	19.9+	17.6+	.3 +
2. Postal cards	143,556	754	28.8	28.9+	.08+
3. Wrapped parcels under seal at letter rate	763	343	11.0+	16.4+	7.1 +
4. Third-class matter	212,726	17,794	10.9	7.4+	1.3 +
5. Fourth-class matter	9,533	3,090	9.8	7.8+	5.1 +
Total	1,014,661	33,754	17.5+	9.6+	.5 +
<i>At 10 second-class offices.</i>					
1. Letters	32,225	857	29.5+	28.0+	.4 +
2. Postal cards	9,616	50	35.8+	35.6+	.08+
3. Wrapped parcels under seal at letter rate	87	177	4.6—	26.6—	32.5 +
4. Third-class matter	5,038	1,075	34.3+	35.8+	3.3 +
5. Fourth-class matter	1,416	1,437	31.9—	41.0—	16.2 +
Total	48,382	3,596	30.8	34.6+	1.1 +
<i>At 10 third-class offices.</i>					
1. Letters	8,123	121	38.5+	30.5—	.2 +
2. Postal cards	1,696	8 ⁹ / ₁₀	49.6	49.7	.08+
3. Wrapped parcels under seal at letter rate	14	7	23.0—	36.3+	8.0
4. Third-class matter	655	76	51.1+	36.0+	1.8
5. Fourth-class matter	144	52	39.4+	33.3+	5.8
Total	10,632	264 ⁹ / ₁₀	40.6	33.3+	.4 —
<i>At 10 fourth-class offices.</i>					
1. Letters	1,559	29	43.0—	41.4+	.3 —
2. Postal cards	581	3 ¹ / ₁₀	60.1+	59.6	.08+
3. Wrapped parcels under seal at letter rate	13	3	92.9—	75.0	3.7 —
4. Third-class matter	833	24	95.2	72.7+	.4
5. Fourth-class matter	24	13	58.5+	68.4+	8.7 —
Total	3,010	72 ¹ / ₁₀	54.3+	55.0—	.3 +

Recapitulation of the 40 offices.

1. Letters	689,990	12,780	20.3+	18.3—	.3 +
2. Postal cards	155,449	816	29.4+	29.4+	.08+
3. Wrapped parcels under seal at letter rate	877	530	9.8+	19.1—	9.6 +
4. Third-class matter	219,252	18,969	11.1+	7.8+	1.3 +
5. Fourth-class matter	11,117	4,592	10.9+	10.7+	6.6 +
Grand total	1,076,685	37,687	17.9+	10.4+	.5 +

Condensed statement of count and weight of mail matter dispatched on the 22d and 23d of October, 1889, at ten of principal first-class offices, etc.—Continued.

SENT EXCEEDING 50 MILES AND NOT EXCEEDING 200 MILES.

[Average distance, 125 miles.]

	Number of pieces.	Weight in pounds.	Per- centage of whole number of pieces.	Per- centage of total weight.	Average weight per piece.
<i>At 10 first-class offices.</i>					
					<i>Ounces.</i>
1. Letters	1, 001, 445	20, 726	30. 7+	31. 2+	. 3 +
2. Postal cards	133, 071	699	26. 7+	26. 8+	. 08+
3. Wrapped parcels under seal at letter rate	2, 474	646	35. 6+	30. 9+	4. 1 +
4. Third-class matter	501, 730	55, 855	25. 7+	23. 3+	1. 7 +
5. Fourth-class matter	22, 289	8, 462	23. 1	21. 6	6. 0 +
Total	1, 661, 009	86, 388	28. 5+	24. 7+	. 8
<i>At 10 second-class offices.</i>					
1. Letters	37, 883	998	34. 6+	32. 2+	. 4 +
2. Postal cards	8, 703	46	32. 4+	32. 7	. 08+
3. Wrapped parcels under seal at letter rate	68	47	3. 6+	7. 0+	11. 0 +
4. Third-class matter	5, 962	886	40. 6+	29. 5+	2. 3 +
5. Fourth-class matter	1, 094	571	24. 6+	16. 2+	8. 3 +
Total	53, 710	2, 548	34. 2	24. 5—	. 7 +
<i>At 10 third-class offices.</i>					
1. Letters	6, 116	126	29. 0+	31. 2+	. 3 +
2. Postal cards	898	4 ⁷ / ₁₀	26. 2+	26. 2	. 08+
3. Wrapped parcels under seal at letter rate	24	6	40. 0—	31. 2—	6. 8 +
4. Third-class matter	270	51	21. 0+	24. 0+	3. 0 +
5. Fourth-class matter	60	41	16. 4+	26. 3—	10. 9
Total	7, 368	228 ⁷ / ₁₀	28. 1+	28. 5+	. 4 +
<i>At 10 fourth-class offices.</i>					
1. Letters	1, 112	20	30. 5+	28. 5+	. 3 +
2. Postal cards	186	1	19. 2+	19. 2	. 08+
3. Wrapped parcels under seal or letter rate					
4. Third-class matter	26	6	3. 0+	18. 1+	3. 7 —
5. Fourth-class matter	7	3	17. 0+	15. 8—	7. 0 —
Total	1, 331	30	24. 0+	22. 8+	. 3 +

Recapitulation of the 40 offices.

1. Letters	1, 046, 556	21, 870	30. 9+	31. 3+	. 3 +
2. Postal-cards	142, 858	750 ⁷ / ₁₀	27. 0+	27. 1—	. 08+
3. Wrapped parcels under seal at letter rate	2, 566	699	28. 8+	25. 1+	4. 3 +
4. Third-class matter	507, 988	56, 798	25. 8+	23. 4+	1. 7 +
5. Fourth-class matter	23, 450	9, 077	23. 1+	21. 2—	6. 1 +
Grand total	1, 723, 418	89, 194 ⁷ / ₁₀	28. 9—	24. 7+	. 8 +

Condensed statement of count and weight of mail matter dispatched on the 22d and 23d of October, 1889, at ten of principal first-class offices, etc.—Continued.

SENT EXCEEDING 200 MILES, AND NOT EXCEEDING 500 MILES.

[Average distance, 350 miles.]

	Number of pieces.	Weight in pounds.	Per- centage of whole number of pieces.	Per- centage of total weight.	Average weight per piece.
<i>At 10 first-class offices.</i>					
					<i>Ounces.</i>
1. Letters	732, 698	15, 458	21. 6+	23. 3+	. 3 +
2. Postal-cards	109, 484	575	22. 3+	22. 0+	. 08+
3. Wrapped parcels under seal at letter rate	1, 733	434	24. 9	20. 8—	4. 0 +
4. Third-class matter	391, 188	61, 116	20. 1+	25. 5	2. 5 —
5. Fourth-class matter	21, 955	8, 686	22. 8	22. 2	6. 3 +
Total	1, 257, 058	86, 269	21. 6+	24. 7—	1. 0 +
<i>At 10 second-class offices.</i>					
1. Letters	16, 049	437	14. 7—	14. 3—	. 4 +
2. Postal cards	3, 844	20	14. 3+	14. 2	. 08+
3. Wrapped parcels under seal at letter rate	1, 432	307	75. 4+	46. 1—	3. 4 +
4. Third-class matter	1, 723	492	11. 7+	16. 4	4. 5 +
5. Fourth-class matter	845	549	19. 0+	15. 6+	10. 3 +
Total	23, 893	1, 805	15. 2	17. 4	1. 2 +
<i>At 10 third-class offices.</i>					
1. Letters	3, 201	70	15. 2+	17. 6+	. 3 +
2. Postal cards	409	2 $\frac{1}{10}$	11. 9+	11. 7	. 08+
3. Wrapped parcels under seal at letter rate	1	$\frac{1}{4}$	1. 6+	. 0+	4. 0
4. Third-class matter	200	42	15. 6+	20. 0—	3. 3 +
5. Fourth-class matter	63	35	17. 2+	22. 4+	8. 8 +
Total	3, 874	149 $\frac{7}{10}$	14. 4+	18. 6+	. 6 +
<i>At 10 fourth-class offices.</i>					
1. Letters	482	10	13. 2+	14. 3—	. 3 +
2. Postal cards	150	$\frac{2}{10}$	15. 5+	17. 3	. 08+
3. Wrapped parcels under seal at letter rate					
4. Third-class matter	9	1	1. 0+	3. 0+	1. 7 +
5. Fourth-class matter	3	1	7. 3+	5. 2+	5. 3 +
Total	644	12 $\frac{2}{10}$	11. 6+	9. 8+	. 3 +

Recapitulation of the 40 offices.

1. Letters	752, 430	15, 975	22. 2+	22. 8+	. 3 +
2. Postal cards	113, 887	598	21. 5+	21. 5+	. 08+
3. Wrapped parcels under seal at letter rate	3, 166	741 $\frac{1}{4}$	35. 5+	26. 6+	3. 7 +
4. Third-class matter	393, 120	61, 651	20. 0+	25. 4+	2. 5 +
5. Fourth-class matter	22, 866	9, 271	22. 5+	21. 6+	6. 5 —
Grand total	1, 285, 469	88, 236 $\frac{1}{4}$	21. 4+	24. 4+	1. 0 +

Condensed statement of count and weight of mail matter dispatched on the 22d and 23d of October, 1889, at ten of principal first-class offices, etc.—Continued.

SENT EXCEEDING 500 MILES, AND NOT EXCEEDING 1,000 MILES.

[Average distance, 750 miles.]

	Number of pieces.	Weight in pounds.	Per- centage of whole number of pieces.	Per- centage of total weight.	Average weight per piece.
<i>At 10 first-class offices.</i>					
1. Letters	578,492	11,879	17.7+	17.7+	Ounces, .3 +
2. Postal cards	71,664	376	14.4	14.4+	.08+
3. Wrapped parcels under seal at letter rate	1,300	431	18.7	20.6+	5.3 +
4. Third-class matter	497,139	60,970	25.5+	25.4	1.9 +
5. Fourth-class matter	20,992	8,804	21.5+	22.5	6.7 +
Total	1,169,587	82,460	20.1+	23.6	1.1 +
<i>At 10 second-class offices.</i>					
1. Letters	13,431	347	12.3—	11.3+	.4 +
2. Postal cards	2,804	14 $\frac{7}{10}$	10.4+	10.0+	.08+
3. Wrapped parcels under seal at letter rate	116	47	6.0+	7.0+	6.5 —
4. Third-class matter	1,061	324	7.2+	10.8	4.8 +
5. Fourth-class matter	641	655	14.4+	18.7—	16.3 +
Total	18,053	1,387 $\frac{7}{10}$	11.5	13.3+	1.2 +
<i>At 10 third-class offices.</i>					
1. Letters	2,103	46	9.9+	11.6—	.3 +
2. Postal cards	291	1 $\frac{5}{10}$	8.5+	8.3	.08+
3. Wrapped parcels under seal at letter rate	12	3	20.0—	15.5+	4.0
4. Third-class matter	56	21	4.3+	10.0—	6.0
5. Fourth-class matter	57	15	15.6+	9.6+	4.2
Total	2,519	86 $\frac{5}{10}$	9.6+	10.8—	.5 +
<i>At 10 fourth-class offices.</i>					
1. Letters	303	6	8.3+	8.5+	.3 +
2. Postal cards	47	1 $\frac{2}{10}$	4.6+	3.8	.08+
3. Wrapped parcels under seal at letter rate					
4. Third-class matter	2	1	0.2	3.0+	8.0
5. Fourth-class matter	5	1	12.2—	5.2+	3.2
Total	357	8 $\frac{2}{10}$	6.4+	6.2+	.3 +

Recapitulation of the 40 offices.

1. Letters	594,329	12,278	17.5+	17.6+	.3 +
2. Postal cards	74,806	392 $\frac{4}{10}$	14.1+	14.2+	.08+
3. Wrapped parcels under seal at letter rates	1,428	481	15.9+	17.4+	5.3 +
4. Third-class matter	498,258	61,316	25.3+	25.3—	1.9 +
5. Fourth-class matter	21,695	9,475	21.4+	22.1+	6.9 +
Grand total	1,190,516	83,942 $\frac{4}{10}$	19.8+	23.3—	1.1 +

Condensed statement of count and weight of mail matter dispatched on the 22d and 23d of October, 1889, at ten of principal first-class offices, etc.—Continued.

ALL DISTANCES EXCEEDING 1,000 MILES.

[Average distance, 1,500 miles.]

	Number of pieces.	Weight in pounds.	Per- centage of whole number of pieces.	Per- centage of total weight.	Average weight per piece.
<i>At 10 first-class offices.</i>					
					<i>Ounces.</i>
1. Letters.....	287,948	6,482	8.8+	9.7+	.3 +
2. Postal cards.....	39,090	205	7.8+	7.8+	.08+
3. Wrapped parcels under seal at letter rate.....	665	233	9.6	11.1+	5.6 +
4. Third-class matter.....	343,323	43,468	17.6+	18.2+	2.0 +
5. Fourth-class matter.....	21,709	10,098	22.5	25.8	7.4 +
Total.....	692,735	60,486	11.9+	17.3+	1.3 +
<i>At 10 second-class offices.</i>					
1. Letters.....	9,624	425	8.8+	13.9—	.7 +
2. Postal cards.....	1,859	9 ⁷ / ₁₀	7.0—	7.0—	.08+
3. Wrapped parcels under seal at letter rate.....	194	88	10.2+	13.2	7.2 +
4. Third-class matter.....	878	223	6.0—	7.4+	4.0 +
5. Fourth-class matter.....	446	292	10.0+	8.3+	10.4 +
Total.....	13,001	1,037 ⁷ / ₁₀	8.3+	10.0	1.2 +
<i>At 10 third-class offices.</i>					
1. Letters.....	1,510	34	7.1+	8.5+	.4 +
2. Postal cards.....	125	7 ⁷ / ₁₀	3.6+	3.9	.08+
3. Wrapped parcels under seal at letter rate.....	10	3	16.4+	15.5+	4.8
4. Third-class matter.....	101	21	8.0—	10.0	3.3
5. Fourth-class matter.....	41	13	11.2+	8.3+	5.0 +
Total.....	1,787	71 ⁷ / ₁₀	6.8+	8.9+	.6 +
<i>At 10 fourth-class offices.</i>					
1. Letters.....	184	5	5.0+	7.1+	.4 +
2. Postal cards.....	2	—	2.0+	—	.08+
3. Wrapped parcels under seal at letter rate.....	1	1	7.1+	25.0	16.0
4. Third-class matter.....	5	1	.5+	3.0+	3.2
5. Fourth-class matter.....	2	1	4.9—	5.2+	8.0
Total.....	194	8	3.5+	6.0+	.6 +

Recapitulation of the 40 offices.

1. Letters.....	299,266	6,946	8.8+	9.9+	.3 +
2. Postal cards.....	41,076	215 ¹ / ₁₀	7.7+	7.7+	.08+
3. Wrapped parcels under seal at letter rate.....	870	325	9.7+	11.7+	6.0 —
4. Third-class matter.....	344,307	43,713	17.5+	18.0+	2.0 +
5. Fourth-class matter.....	22,198	10,404	21.9+	24.3—	7.5 —
Grand total.....	707,717	61,603 ⁴ / ₁₀	11.9+	17.1—	1.3 +

EMPLOYMENT OF CONVICT LABOR ON GOVERNMENT WORKS.

MAY 6, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. DAVIS, from the Committee on Labor, submitted the following

REPORT:

[To accompany H. R. 8605.]

The Committee on Labor, to which was referred sundry bills on the employment of convict labor on Government works, have prepared bill No. 8605 as a substitute, and beg leave to submit with it the following report:

First. Your committee is of the opinion that the public buildings and works of the United States should be the product of the brains, hands, and muscles of free men, and that the honor and good name of the nation should not be stained or the sense of propriety of our citizens outraged by the spectacle of labor in convict costumes doing the work of free men on the magnificent structures which are to endure for all time as monuments of the wealth, glory, and magnificence of the greatest and freest Republic on earth.

Second. As a matter of fairness among contractors and subcontractors doing Government work, where all can not avail themselves of cheap convict labor, your committee is of the opinion that none should be permitted to use such cheap labor; otherwise the favored parties would enjoy undue advantages over all competitors.

Third. While your committee does not attempt to solve the difficult problem of the proper management and employment of convicts, yet it desires to be distinctly understood as positively recommending that all competition between prison labor and free labor shall be, as much as possible, eliminated; and, as a first step in the right direction, your committee hereby recommends the passage of the bill herewith presented, and that H. R. 255, 397, 443, and 2740 lie on the table.

SARAH K. McLEAN.

MAY 6, 1892.—Laid on the table and ordered to be printed.

Mr. BELKNAP, from the Committee on Military Affairs, submitted the following

ADVERSE REPORT:

[To accompany H. R. 2120.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 2120) for the relief of Sarah K. McLean, having considered the same, respectfully report:

The committee has examined the evidence presented with this case and on the showing made does not consider the claimant entitled to the relief asked for under the provisions of this bill.

The report on this case, made by the Senate, Fiftieth Congress, is printed herewith as a part of this report, and your committee, from a careful investigation of this report, both majority and minority, can find no good reason why this relief should be granted. To sum up all the points briefly in this claim discloses the facts that Col. McLean voluntarily resigned his commission in the Army; after nearly eleven years he was restored and placed on the retired list of the Army. The object of this bill is to pay his heirs the salary that he would have earned had he remained in the service during these years. Seeing no good reason why this should be done, the committee recommend that the bill do not pass.

[Senate Report No. 1449, and views of minority, Fiftieth Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 1284) for the relief of Sarah K. McLean, widow of the late Lieut. Col. Nathaniel H. McLean, have examined the same, and report:

The late Lieut. Col. Nathaniel H. McLean was graduated at the Military Academy in 1844, and rose through various promotions to the rank of major and assistant adjutant-general, when he resigned, June 24, 1864. His military history is hereto annexed as Exhibit A.

The resignation was caused by what he deemed, and was afterward considered by Congress, to be most oppressive treatment by the War Department. On May 20, 1874, the Committee on Military Affairs of the House of Representatives were by resolution instructed to inquire "whether Maj. N. H. McLean, late of the Adjutant-General's Department, was not unjustly treated on the trial of Capt. F. W. Hurtt, late assistant quartermaster of United States volunteers, and on his retirement from the Army, and whether the facts disclosed in the record submitted to the House do not call for his reinstatement." After a thorough investigation by the committee (Forty-third Congress, second session), a report was submitted (House Report No. 279) March 3, 1875, which is hereto annexed as Exhibit B, and which fully shows that this officer had been treated with extreme injustice. It seems that no report was ever made by the Senate Committee on Military Affairs—at least none can be found by your committee.

It resulted from these premises that the following act, approved March 3, 1875, was passed:

"Be it enacted, etc., That the President be, and he is hereby, authorized to appoint Major Nathaniel H. McLean, late of the United States Army, to fill the first vacancy which may occur in the lowest grade of the Adjutant-General's Department, or, if he shall deem it best, to reinstate and retire him with the rank to which he would have attained in the service at the date of the passage of this act."

This bill was introduced by the committee of the House of Representatives, with their report.

On the 15th day of March, 1875, the President sent to the Senate the following message:

WASHINGTON, *March 12, 1875.*

To the Senate of the United States:

Conformably to the act of Congress approved March 3, 1875, I nominate, with a view of placing him on the retired list of the Army, Nathaniel H. McLean, late of the United States Army, to be assistant adjutant-general with the rank of lieutenant-colonel; that being the rank he would have attained at the date of the passage of the act.

U. S. GRANT.

The Senate, on the same day, advised and consented to the foregoing nomination by the following resolution:

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
March 15, 1875.

Resolved, That the Senate advise and consent to the appointment of Nathaniel H. McLean, late of the United States Army, to be assistant adjutant-general with the rank of the lieutenant-colonel, with a view of placing him on the retired list of the Army, agreeably to the nomination.

Attest:

GEO. C. GORHAM,
Secretary.

Whereupon, on the 18th day of March, 1875, the President issued the following commission:

The President of the United States of America to all who shall see these presents, greeting:

Know ye that, reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of Nathaniel H. McLean, I have nominated and, by and with the advice and consent of the Senate, do appoint him [with a view to placing him on the retired list of the Army, in conformity with the act approved March 3, 1875] lieutenant-colonel and assistant adjutant-general in the service of the United States, to rank as such from the third day of March, eighteen hundred and seventy-five. He is therefore carefully and diligently to discharge the duty of assistant adjutant-general by doing and performing all manner of things thereunto belonging. And I do strictly charge and require all officers and soldiers under his command to be obedient to his orders as assistant adjutant-general. And he is to observe and follow such orders and directions, from time to time, as he shall receive from me, or the future President of the United States of America, or the general or other superior officers set over him, according to the rules and discipline of war. This commission to continue in force during the pleasure of the President of the United States, for the time being.

Given under my hand, at the City of Washington, this eighteenth day of March, in the year of our Lord one thousand eight hundred and seventy-five, and in the ninety-ninth year of the Independence of the United States.

U. S. GRANT.

By the President.

WM. W. BELKNAP.
Secretary of War.

By the following order of the same date Lieutenant-Colonel McLean was placed upon the retired list:

[General Orders No. 25.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, March 18, 1875.

Under authority conferred by "An act for the relief of Maj. N. H. McLean, late of [the] Adjutant-General's Department, United States Army," approved March 3, 1875, the President directs that Lieut. Col. N. H. McLean, under his appointment as

assistant adjutant-general with the rank of lieutenant-colonel (that being the rank to which he would have attained in service at the date of the passage of the act), be placed on the retired list of the Army, to date from March 3, 1875.

By order of the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

Official:

Assistant Adjutant-General.

He died in 1884, and the bill under consideration (S. 1284) is for the relief of Sarah K. McLean, his widow.

The bill, for convenience of reference, is herein set out:

"A BILL for the relief of Sarah K. McLean, widow of the late Lieutenant-Colonel Nathaniel K. McLean.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers be, and they are hereby, directed to settle and adjust to Sarah K. McLean, widow of the late Lieutenant-Colonel Nathaniel H. McLean, all back pay and emoluments that would have been payable and due to the said Lieutenant-Colonel Nathaniel H. McLean from July twenty-third, eighteen hundred and sixty-four, to the date of his reinstatement, March third, eighteen hundred and seventy-five, according to the rank to which he would have been entitled had he continued in the Army, for and during said period, and that the amount found due by said adjustment is hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated."

Your committee are of opinion that no question of fact exists in this case and that the only matters for their consideration are questions of construction, presented by the act of Congress, by the appointment or reinstatement of this officer, by the action of the Senate thereon, by the terms of his commission and by the order under which he was retired.

The statute empowered the President, in his discretion, to do one, and only one, of two acts; either—

(1) To appoint the officer to fill the first vacancy that might occur in the lowest grade of the Adjutant-General's Department, or—

(2) If he should deem it best to *reinstate* and retire him with the rank to which he would have attained in the service at the date of the passage of the act.

And the first question is to determine to which of these discretionary acts his action is referable, illustrated, as we think it must be, by the history of this case up to and including the passage of the statute, and by the subsequent proceedings of the executive department in relation to this officer. The matter is not free from difficulty. Had the President by order simply reinstated this officer there could be no discussion as to which of the acts he had performed. But instead of giving his official action this form he adopted the course of nominating McLean, and, by and with the advice of the Senate, appointing him as lieutenant-colonel and assistant adjutant-general, to rank as such from the 3d day of March, 1875, with a view of placing him on the retired list of the Army, in conformity with the act of Congress before set out, and then retired him by a general order.

Giving a fair construction to these papers upon their face, your committee are of the opinion that they were intended to and did operate as a reinstatement of Colonel McLean in the rank to which he would have attained at the date of the passage of the act. It was manifestly not intended to fill a vacancy, for the nomination was not to fill the lowest grade of the Adjutant-General's Department, and no vacancy is stated to have then existed. It was made almost immediately upon the passage of the act, whereas the terms of the act manifestly contemplated that a period of time must elapse in which the vacancy of such lowest grade might occur, and contemplated active service in the future. But reinstatement for the purpose of retiring means that the officer is to be considered, in legal contemplation, as having actually served the necessary period to entitle him to be retired. Besides, the President had no authority under the act to nominate this officer to the first vacancy in the lowest grade and then retire him with the rank to which he would have attained in the service at the date of the passage of the act. Had the President done so he would have violated the law, and the construction which leads to such a conclusion is of course to be avoided. He would also have violated the statute had he simply reinstated this officer and then ordered him into active service, because he was authorized to reinstate for the sole purpose of retiring him. And again, the message by which McLean was nominated recites that it was done with the view of placing the officer on the retired list of the Army. The resolution by which he was confirmed also expresses the same purpose. That this was the intention of the President also appears from the order of the War Department by which he was retired, hereinbefore set out, in which it is recited

that the rank of lieutenant-colonel is the rank which he would have attained in the service at the date of the passage of the act.

It is sometimes thought proper in considering official papers of the kind now under consideration, which taken together form the connected history of a transaction, to examine the preliminary documents, and if this rule is at all to influence the judgment here it is impossible not to be instructed by the House report (upon which the Senate must manifestly have acted, considering that the bill was passed and became a law on the day of the date of that report) that the opinion of Congress was that reinstatement of this officer was necessary to do him that ample justice which the treatment to which he had been subjected required.

The resolution by which the investigation was ordered declares the purpose of that investigation to be to ascertain whether the facts "do not call for his reinstatement."

Your committee are therefore of the opinion that the effect of the premises was to reinstate Lieutenant-Colonel McLean. The question then arises whether he thereby became entitled to the pay and emoluments that would have been due him from July 23, 1864, when he resigned, to the date of his reinstatement, March 3, 1875, had he remained in the service.

It will be observed, in the first place, that the act of March 3, 1875, contains no provision, as is usual in statutes of this character, respecting pay and emoluments for the time during which this officer was out of the service. It was thus manifestly the design of Congress to leave this question to the determination of general legal principles applicable to such cases, and to such precedents as similar cases may have called into existence. It is also manifest that in the contemplation of Congress reinstatement and appointment do not mean the same thing, and by no means imply the same consequences. The careful and explicit phraseology of the act plainly distinguishes "reinstatement" from "reappointment," and it was left to the President to determine as a matter of discretion whether this officer should be a reinstated officer or a reappointed officer. The word "reinstate" has a definite and well-settled meaning. Like the words "restore," "recover," "replace," it not only implies but means that matters shall be caused to be in the same position they were before, not only in quality, but as to time. The legal phrase "entry," as used in regard to land, implies consequences dating only from the act, but the word "re-entry" was always held to put the party making reëntry with right in possession as of his first estate.

It was undoubtedly the intention of Congress to vest in the President a discretionary power to either make entire reparation to this officer for a wrong done him by his Government by canceling that wrong and its consequences, so far as possible, and to make them as if they had never been, or to merely ignore the wrong so far as the past was concerned and appoint him anew in the Army. If it appears, as we think it does, from this record that the intention of the Executive was that of the first alternative, then all subordinate consequences, including that of pay and emoluments, follow irrefutably.

Authority is not wanting to sustain the conclusion above indicated. In the case of *Collins v. The United States*, 14th Court of Claims Reports, p. 568, the plaintiff being then a major, from January 20, 1865, was mustered out January 1, 1871, upon the reduction of the Army under the act of July 18, 1870. On the 3d of March, 1879, Congress passed the following act:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to reinstate Major Joseph B. Collins, late of the United States Army, and to retire him in that grade, as of the date he was previously mustered out, charging him with all extra pay and allowances paid him at that time."

In pursuance of this act the President issued the following order:

EXECUTIVE MANSION, March 8, 1879.

Under authority conferred by the act approved March 3, 1879, Joseph B. Collins is hereby reinstated in the Army of the United States as a major of infantry, and placed on the retired list in that grade, to date January 1, 1871.

R. B. HAYES.

Collins then sought to obtain the pay allowed by statute to a retired officer of his rank, less the one year's pay and allowance which he had received under the act of 1870, by which he was mustered out of the service, but this the accounting officer refused to allow, on the ground that he had not been appointed by and with the advice and consent of the Senate. The case at this stage of the proceedings being upon demurrer, the court held that the advice and consent of the Senate were not necessary to validate the order by which Major Collins had been reinstated, and it cites

in its opinion (pp. 571-573) many statutes relating to restoration and reinstatement, and observes (p. 573):

"These two classes of statutes show that between officers to be restored for active service and those who are to be restored in order to be placed on the retired list, or whose cases are otherwise peculiar, Congress makes a distinction as to requiring or dispensing with the advice and consent of the Senate to their restoration, and that it acts advisedly in the use of the different language employed, with the clear intent to define in each case upon whom the appointing power is conferred."

The case having afterwards come to an issue of fact is again reported in 15th Court of Claims Reports, page 22. The court reiterated its previous opinion that "where the President is authorized by law to reinstate an army officer he may do so without the advice and consent of the Senate, and that when he exercises the discretion vested in him by an act of Congress of reinstating an officer, and expresses his will by an order to that effect, the officer acquires a vested right to the office."

It will be observed that the act in reference to Major Collins authorized the President to reinstate him and retire him in that grade as of the date he was previously mustered out. The statute in the case under present consideration authorized the President, if he shall deem it best, to reinstate and retire McLean with the rank to which he would have attained in the service at the date of the passage of the act. Collins was reinstated March 8, 1879, and he was retired March 11, 1879.

It is proper to observe here that Collins's nomination was sent to the Senate by the following message:

WASHINGTON, March 21, 1879.

To the Senate of the United States:

To carry out the provisions of an act (Public No. 201) entitled "An act for the relief of Joseph B. Collins," approved March 3, 1879, I nominate him for the appointment of major of infantry, to rank from January 20, 1865, to reinstate him in the Army, with a view of his being retired from active service from January 1, 1871.

R. B. HAYES.

No action was taken by the Senate on this nomination, and on the 10th day of June it was withdrawn by the following communication from the President:

WASHINGTON, March 25, 1879.

To the Senate of the United States:

I withdraw the name of Joseph B. Collins, nominated, on the 21st of March last for reappointment as major of infantry from January 20, 1865, in accordance with an act of Congress approved March 3, 1879.

R. B. HAYES.

It was maintained by the United States in that case that the appointment of Collins was conditional upon the advice and consent of the Senate. As to this the court observes:

Nor does the letter of the Secretary of War attempt to make the appointment a conditional one. On the contrary, it recites that the President, under the authority of the act of March 3, 1879, *has appointed* the claimant with a view of placing him on the retired list. The only condition mentioned is that should the Senate, at their next session, advise and consent thereto, the claimant would be commissioned accordingly. But no further commission was necessary. The claimant had received all that was necessary under the law—an order from the President reinstating and retiring him in accordance with the provisions of the act. This was a much more formal appointment than that which the Supreme Court expressly held to be valid in Moore's case. (95 U. S., 76, and see 14 C. Cls. R., 575.) That was a mere certificate of an examining board, approved by the Secretary of the Navy, setting forth that Moore had passed a satisfactory examination for promotion.

According to the views expressed by the Supreme Court in *Marbury vs. Madison* (1 Cranch, 157, and 1 Curtis's Edition, 373), when the President, by an "open, unequivocal act," exercised the discretion reposed in him, and expressed his will appointing the claimant, the latter acquired a vested right to the office, and became entitled to a commission, or to exercise his official duties without one. The court say, "The acts of appointing to office and commissioning the person appointed can scarcely be considered as one and the same, since the power to perform them is given in two separate and distinct sections of the Constitution."

"For some reason which does not clearly appear it was at first deemed advisable in this instance to ask the advice and consent of the Senate after the appointment had been made. It will be observed that the nomination by the President asks that advice and consent to something more than the act provided for. It asks the reinstatement of the claimant 'to rank from January 20, 1865,' a date six years earlier than that mentioned in the act in reference to the time of his retirement. The letter of the Secretary of War also mentions the earlier date as that from which the claim-

ant was to have rank as a major, and for which he would have a commission if the Senate would advise and consent thereto. It may have been with the view of giving the claimant a commission entitling him to rank from January 20, 1865, instead of January 1, 1871, that the letter of the Secretary was written and the nomination by the President made. Or the advice and consent of the Senate might have been asked out of abundant caution, in order to avoid the objection which is now raised on the part of the defendants, that the President alone was not authorized to make the appointment. Upon subsequent, and no doubt more mature, consideration, the nomination was withdrawn by the President as unnecessary; and since this action was commenced the claimant's reinstatement has been recognized by the War Department, and he has been paid his current salary from March 8, 1879."

After disposing of these preliminary questions, the court states the money question as follows:

"The claimant seeks to recover the pay of a retired officer from January 1, 1871, the date as of which he was retired by the President, under the provisions of the act for his relief, and the question arises whether or not that was the intention of Congress, as expressed in the act."

After adverting to the fact that in its former opinion it had referred to eighteen acts in all, one of which was in its language like the Collins act, and that everyone of the other acts authorized the appointment from the date of the act, or, when it specifies an earlier date, it adds a provision "with pay of such rank from the date of the passage of this act," or he "shall not be entitled to any pay or allowances as an army officer for the time he may have been out of the military service," etc., the court observes:

"It is significant of the intention of Congress that of all these nineteen private acts for the benefit of individual officers, only two—that for the reappointment of Dr. Powell as an assistant surgeon in the Army, to which we have before referred (20 Stat. L., 276), and this one for the relief of Major Collins—omit to prohibit or prevent, in some form, the beneficiary from receiving back pay. This difference of language is so important that it can be accounted for on no other ground than that the cases of Dr. Powell and Major Collins were regarded as so exceptional in their circumstances that Congress was willing and intended to allow them pay from the date as of which they were respectively authorized to be appointed or retired."

The result was that Major Collins recovered the sum of \$17,987.83 as the pay of a retired officer from January 1, 1871.

Our attention has been called to the case of *Kilburn vs. The United States*, 15th Court of Claims Reports, page 41. It is plainly distinguishable from the one under present consideration, and, indeed, was so distinguished by the court in its opinion, as follows:

"In all the cases referred to, the parties to whom back pay has been allowed have been considered by Congress to have been illegally or unjustly or inadvertently dismissed from the service. In order to remedy the wrong or repair the injustice of such dismissal, it has been considered both just and humane that its revocation should be complete, and should relate back to the day of the order of the dismissal, so as to make the party entitled to full pay, as though no such order had even been made." (*Winters vs. The United States*, 3 C. Cls. R.; *Smith vs. United States*, 2 C. Cls. R., 140.)

The case, therefore, stands thus:

The President was authorized in his discretion to appoint Major McLean to fill the first vacancy in the lowest grade of the Adjutant-General's Department, or to reinstate him in the service, giving him all the promotions he would have received had he actually served during all of the years which had elapsed after his resignation.

The question of procedure is not material. The question is, What was actually done?

This officer was not appointed to a lower grade, nor was he continued in active service. He was, as a matter of fact, reinstated, and the order by which he was retired was immediately made.

Had this restoration to the service been intended as an "appointment" it would have been unwarranted by the statute, because it advanced the officer to the rank of lieutenant-colonel, instead of installing him into "the first vacancy which may occur in the lowest grade of the Adjutant-General's Department," as the statute provides, and the order retiring him would have been likewise without warrant, because retirement was authorized only in the case of reinstatement.

If, however, what was done constitutes reinstatement, the retirement was legally made, and the conclusion that the President acted without authority in retiring this officer is wholly avoided.

Your committee are of the opinion that the claimant in this case is entitled to relief. They recommend, therefore, the passage of the bill, with the following amendments:

Strike out the word "lieutenant-colonel," in line 7, and insert after the word "McLean," in the same line, the words "as a major."

Strike out all after the words "seventy-five," in line 10, to the word "period" in line 15. We deem this last amendment necessary for the reason that this officer when he resigned was a major and think that sufficient equity is done by allowing the claimant the pay and emoluments of that rank, it not appearing at what date he would have attained the rank of lieutenant-colonel had he remained in the service.

EXHIBIT A.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, March 2, 1888.

Statement of the military service of Nathaniel H. McLean, late of the United States Army, compiled from the records of this office:

He was a cadet at the United States Military Academy from July 1, 1844, to July 1, 1848, when graduated and appointed brevet second lieutenant Seventh Infantry; promoted second lieutenant Second Infantry March 29, 1849, and first lieutenant January 8, 1853. He was appointed brevet captain and assistant adjutant-general May 11, 1861, and captain and assistant adjutant-general August 3, 1861; promoted major and assistant adjutant-general July 17, 1862. He resigned June 24, 1864.

He was appointed lieutenant-colonel and assistant adjutant-general March 3, 1875 (act of March 3, 1875), upon which date he was retired from active service.

He joined his regiment (Seventh Infantry) November, 1848, and served with it at Jefferson Barracks, Mo., to (on leave March 2 to April 6, 1849) July 19, 1849, when he proceeded to join the Second Infantry and served therewith in California to (on leave July 13 to August 27, 1851) September 13, 1854; on recruiting service to January 23, 1855; on leave to April 4, 1855; with regiment at Carlisle Barracks, Pa., to May 14, 1855; on leave to June 7, 1855; with regiment at Fort Pierre, Mont., to July 28, 1856, and at Fort Randall, Nebr., to (on leave March 2 to September 7, 1857) June 4, 1858; on recruiting service to March 14, 1860; on coast-survey duty to May 22, 1861; adjutant-general of the Department of the Ohio from May to December 8, 1861; on mustering and disbursing duty in Washington, D. C., from December 11, 1861, to January 9, 1862; adjutant-general of the Department of the Missouri from January 31 to March 11, 1862; of the Department of the Mississippi to July 11, 1862; of the Department of the Missouri to August 23, 1862, and of the Department of the Ohio to December 26, 1863; on duty at Portland, Oregon, as assistant provost-marshal-general and superintendent volunteer recruiting service for Oregon and Washington Territory to July 23, 1864, having resigned to date June 24, 1864.

He was unemployed from date of retirement, March 3, 1875, to June 28, 1884, upon which date he died.

R. C. DRUM,
Adjutant-General.

EXHIBIT B.

[House Report No. 279, Forty-third Congress, second session.]

The Committee on Military Affairs, who, by a resolution of the House of Representatives passed May 20, 1874, were instructed to inquire "whether Maj. N. H. McLean, late of the Adjutant-General's Department, was not unjustly treated on the trial of Capt. F. W. Hurtt, late assistant quartermaster of United States volunteers, and on his retirement from the Army, and whether the facts disclosed in the record submitted to the House do not call for his reinstatement," with power to send for persons and papers, have performed that duty, and, after a patient and careful consideration of the subject, beg leave to report:

That the said N. H. McLean graduated at the United States Military Academy, West Point, in 1848, and immediately entered the Army and served as brevet second lieutenant in Second United States Infantry in California until 1854, when he was made adjutant of the regiment. He continued to do hard duty all the time in the Western Territories, until the commencement of the war, when he was placed in command of the Washington Arsenal. Afterward, he was ordered to Harrisburg, Pa., to establish a depot of supplies for troops there concentrated, and while so engaged was selected for promotion to the Adjutant-General's Department, and ordered to report to General McClellan at Cincinnati, Ohio. Subsequently, he was on duty with General Buell in Kentucky, and General Halleck in Missouri, and in each case seems to have performed his duty faithfully and satisfactorily. Afterward, he was transferred to duty as chief of staff to General Wright, then commanding Department of the Ohio, and retained on duty at said headquarters by General Burnside. It appears

that up to this time and during his entire service he was never under arrest or charges, and no one ever questioned either his courage or patriotism. His record was not only without blemish, but honorable to himself and the service.

While on duty as assistant adjutant-general at headquarters, Department of Ohio, Major McLean was ordered by General Burnside to investigate and report the manner in which the affairs of the quartermaster's department had been administered by Capt. F. W. Hurtt, assistant quartermaster United States volunteers, stationed at Cincinnati, and against whom corruption and fraud in office had been charged. This order (a copy of which accompanies this report) was dated July 28, 1863. Major McLean, after a long, patient, and thorough investigation, made his report September 26, 1863 (a copy of which is hereto attached), finding Captain Hurtt guilty of many and gross irregularities and frauds, and specifically charging him with eighteen distinct acts of official misconduct, and detailing the facts and giving the names of the witnesses to support the said charges. On September 28 General Burnside referred this report to Maj. H. L. Burnet, judge-advocate of the department, for further investigation and the use of the court-martial to be ordered for Captain Hurtt's trial. On October 18, Major Burnet writes the Judge-Advocate-General in relation to the cases of Hurtt and others, adding that they "will be contested with a great deal of pertinacity, and with all the force that money and influence can bring to bear." The court-martial was ordered November 23, 1863, to meet at Cincinnati on December 1, with a detail of Major-General Hartsuff and others for the court. But on November 30, the day before the time fixed for the trial, the Secretary of War countermanded the order convening the court-martial and directed that the officers detailed therefor be sent to their respective commands, and the cases proposed for trial referred to the Judge-Advocate-General. (See pages 398 and 399 of Ex. Doc. 255, first session Forty-third Congress.) A second court-martial was ordered January 18, 1864, to meet in Cincinnati January 25, with a detail of General Ammen and others for the court. It was in session thirty-four days, and the proceedings were fully reported, and, by order of the House, have been recently printed in Ex. Doc. 255. The court found Hurtt guilty, and sentenced him to be dishonorably dismissed the service, and the finding and sentence were approved by the Secretary of War.

On October 15, 1863, which was after Major McLean had made his report, and before the first court-martial was ordered for the trial of Hurtt, an article appeared in the Times newspaper of Cincinnati, signed by Edgar Conkling, an honest, well-meaning man, charging Major McLean with disloyalty, and on October 28 the charge was repeated in a letter written by said Conkling to the President of the United States. (See article and letter, Ex. Doc. 255, pages 366, 367, 368.) The fact relied upon by Mr. Conkling to sustain this charge of disloyalty was, that at the election in Ohio for State officers, when John Brough was the Republican and C. L. Vallandigham the Democratic candidates for governor, Major McLean *did not vote at all*. To this Major McLean (protesting his loyalty, etc.) answered that as an Army officer he had been absent from the State fifteen years, and supposed that, under the constitution and laws of Ohio, he had no right to vote, and so had not made the attempt. And hearing of the charges, the mayor of Cincinnati, together with Bishop McIlvaine, Archbishop Purcell, and many of the leading Republican citizens of Cincinnati, addressed a letter to the Secretary of War strongly indorsing Major McLean's loyalty; and testifying to his "unimpeachable integrity," etc. The Governor of Ohio, David Tod, telegraphed the Department in behalf of Major McLean, adding that he had "ever found him a most faithful, accommodating, and efficient officer."

But it seems that the denial of Major McLean was not regarded as satisfactory by the Secretary of War (see page 367 of Ex. Doc. 255), and he was (October 27, 1863) ordered to report to General Alvord, commanding district of Oregon, Fort Vancouver, for duty. On hearing of the order General Burnside at once telegraphed the Secretary of War as follows:

[Telegram received at Washington, 3:20 a. m., November 5, 1863, from Knoxville, dated November 14, 1863.]

Hon. E. M. STANTON, *Secretary of War*:

I most respectfully but earnestly request that Maj. N. H. McLean be allowed to remain on duty at the headquarters of this department. He understands all the work of the department, is faithful, industrious, capable, and as loyal as you or I. He is necessary to the Government as witness in some trials of men suspected of fraud against the United States Government, and as I originated the investigation, I think it is due me from the Government that he should be heard.

A. E. BURNSIDE,
Major-General,

But this earnest appeal proved of no avail, and Major McLean was peremptorily ordered to proceed at once to Fort Vancouver, Oregon. He left New York on Christmas, 1863. Just before leaving he received a letter from General Burnside (a copy of which is hereto attached), in which occur these words: "I have hoped to have your orders revoked, but it seems impossible, and I must now thank you for your entire devotion to your duties while under my command. Be patient a little while, and all will be well. They can not harm you, for you are far above them in pure, disinterested patriotism and devotion to your country. I shall not forget to do all in my power to right you." On his arrival at San Francisco he received an order of the War Department (see Special Order 510) directing him to relieve Lieut. Col. T. C. English in duties of assistant to the Provost-Marshal-General, United States, for the State of Oregon and the Territory of Washington, and to assume the duties of superintendent of volunteer recruiting service for said State and Territory. He entered upon duty at Portland, Oregon, February 10, 1864, but keenly feeling what he considered official disgrace, he was constrained by a sense of honor to tender his resignation. It was accepted May 19, and he relieved from duty on 23d July following. While in Oregon he seems to have performed his duty faithfully, satisfactorily to the Government, and in such a way as to merit the thanks of the loyal people of Oregon, which were formally tendered him through Addison C. Gibbs, the governor of the State. (See his letter hereto attached.)

Major McLean has ever since been out of the service, and he testifies that he has neither asked for reinstatement nor applied for or instigated this investigation. He believes he was the victim of a wicked conspiracy, and that he has been grossly wronged and cruelly disgraced, but he has patiently and silently waited, assured that time would sooner or later vindicate him and his honor.

Ordinarily, the removal of an officer from one post of duty to another, however, remote or disagreeable, does not call for comment, much less for investigation and report. But a careful consideration of all the testimony convinces your committee that this case is a remarkable one, and that it deserves Congressional consideration. The order was made during a dark period of the war, when the Government needed in active service near the seat of war all officers who were faithful and qualified. There were special reasons for maintaining Major McLean: 1st, he was on duty at the headquarters of General Burnside, who not only desired him to remain, but earnestly protested against his removal; 2d, he had made the investigation in the Hurtt case, and upon his report the charges were made, and court-martial ordered, and as he was familiar with all the facts, it was of the very highest importance that he remain and assist the Government in the prosecution of the case.

Why, then, in the face of the facts, all of which were presented and pressed upon the Secretary of War, was Major McLean so peremptorily ordered to one of the most remote posts in the whole country? Ostensibly because he was charged with and believed guilty of disloyalty. The charge relied and acted upon could not have been the letter of Edgar Conkling to the President, for that was dated at Cincinnati, October 28, *which was one day after the order was made*. The only other charge, so far as the evidence and papers show, ever made against Major McLean was contained in the article published in the Cincinnati Times, *which was forwarded to the War Department by Major McLean himself*. As already stated, the article based the charge of disloyalty on the fact that McLean did not vote at a State election which had just been held in Ohio. As officers of the regular Army (whether for sufficient reasons or not your committee are not called upon to decide) rarely exercise the right of suffrage, this fact could hardly be just cause of suspicion; but in this case Major McLean explained, in a letter published in the same newspaper and forwarded to the Secretary of War, that he did not vote because, after an examination of the constitution and laws of Ohio, he believed *he had no right to vote*. Whether he had the right to vote or not, if he honestly believed that he did not have the right, and for that reason did not offer to vote, he was and ought to have been held excusable. But, on an examination of the constitution and laws of Ohio, your committee are satisfied that McLean was right, and that he was not entitled to vote at said election.

But if any possible suspicion remained it ought to have been removed by the direct and emphatic statement of General Burnside, the prompt telegram of Governor Tod, and the strong letter of Bishop McIlvaine, and other men of tried and known loyalty in Cincinnati.

Making due allowance for the excitement and turbulence of the war times, it still does not seem possible that Secretary Stanton had any real suspicion as to McLean's loyalty. If he had, why did he send McLean to a distant State and there detail him to duty as assistant to the Provost-Marshal-General of the United States and superintendent of the volunteer recruiting service in the State of Oregon?

But if his banishment was not because of supposed disloyalty, the question recurs, for what was it done? Among the papers placed in evidence is the affidavit of Capt.

W. P. Anderson, a worthy, reliable citizen of Cincinnati, which seems to throw some light on the subject. It is as follows:

STATE OF OHIO, *Hamilton County*, ss:

Personally appeared before me, the undersigned, a notary public in and for Hamilton County, W. P. Anderson, who, being first sworn according to law, deposes and says as follows:

During the winter of 1863 I held the commission of assistant adjutant-general, United States Volunteers, and was associated on duty, at headquarters, Department of the Ohio, at Cincinnati, Ohio, with Maj. N. H. McLean, assistant adjutant-general United States Army. Under the orders of Maj. Gen. A. E. Burnside, commanding the department, Major McLean was directed to investigate and report upon the administration of the affairs of the quartermaster's department of the Government service by Capt. F. W. Hurtt, assistant quartermaster of volunteers, stationed at Cincinnati, Ohio. I remember distinctly that some ten days before Major McLean submitted his report to the commanding general, he came to me and stated that there was trouble in store for him in consequence of the report he would soon submit in relation to Captain Hurtt, and in consequence of so many parties of political and moneyed influence being directly or indirectly involved. The major stated that he had been ordered to make the investigation and the report referred to, and that his fixed purpose was to do his whole duty faithfully, let consequences result as they might. I remember that Major McLean predicted that the case would not be tried while he was on hand, but that any court the commanding general might order would be dissolved and that he (Major McLean) would be ordered to some remote point. The facts were distinctly impressed on my mind by the strangely correct fulfillment of Major McLean's prediction. I also recollect that, after Major McLean had submitted his report, and had received orders assigning him to duty in Oregon, Captain Hurtt came to the department headquarters, and that Major McLean informed me that Hurtt endeavored to get him (McLean) to promise that he would aid in his (Hurtt's) defense when his case should be tried, and expressed the belief that if Major McLean would do so, he (Hurtt) could find the influence to have the orders of the War Department, directing Major McLean to proceed to Oregon, modified or revoked, McLean stating he told Hurtt the case was a serious one, and that he intended to do his whole duty for the Government regardless of consequences.

W. P. ANDERSON.

Sworn to before me, and subscribed in my presence, this 16th day of June, A. D. 1874:

[SEAL.]

CHARLES F. SYBOLD,
Notary Public, Hamilton County, Ohio.

It will be remembered that during his fifteen years' service as an officer of the Army there had never been a complaint as to his conduct, or a suspicion as to his loyalty or integrity. It was not until after he had made his report in the Hurtt case that his troubles began, and he and his friends, naturally enough, conclude that they have a necessary connection.

The testimony shows that Hurtt was much in the habit of seeking and using, when possible, the influence of his political friends; and that as quartermaster he had large money transactions with business men and capitalists in Cincinnati, and elsewhere, some of which were of a fraudulent character. It was through these influences that he had procured an assignment to duty at Cincinnati, and it was by these same means that he was seeking to get into the regular Army and to displace his superior officer at Cincinnati, Captain Dickerson, and so control larger disbursements of the public money and have greater opportunities for speculation and gain for himself and friends. It would seem not unlikely, therefore, that when he found himself investigated and exposed, and about to be tried and punished, he would use, in so far as was possible, the same political and business influences to get rid of the officer who had investigated the whole affair, knew all the witnesses, and was familiar with all the facts, and was almost indispensable to the Government in the prosecution of the case. Major McLean feared this at the time, and it seems also to have been apprehended by General Burnside and his advocate-general, Burnet, and hence their efforts to have him retained until after the trial, General Burnside making this earnest appeal: "As I originated the investigation, I think it is due me from the Government that he (McLean) should be heard."

It will be seen by reference to the testimony in the Hurtt case that when Hurtt wanted to displace Captain Dickerson, he managed to have that officer suspected of disloyalty. The temper of the times was such that the easiest and cheapest way of injuring anyone was to raise against him a suspicion of disloyalty; and, granting that Hurtt really wanted to get rid of McLean (about which there can be but little doubt), he would be likely to try the same tactics employed against Dickerson. And while there is no direct proof that he did, there are many facts and circum-

stances, which can not be detailed within the limits of a Congressional report, which strongly tend to prove that the removal was brought about by Hurtt and those implicated with him in Government contracts and frauds. Just how it was done may never be certainly known, but from all the light that can be obtained from the testimony, it would seem to have been accomplished through innocent and good men, who were unsuspectingly used to prejudice the mind of the Secretary of War and to influence the action of the War Department. Indeed, there is no other reasonable way of accounting for either the removal of Major McLean or the revocation of the first order for a court-martial.

But whether Hurtt or the Hurtt court-martial had much or little to do with the removal, or whether the suspicion of disloyalty was the real or pretended cause of his disgrace, your committee are clearly of the opinion that Major McLean was unfairly and unjustly dealt with, and that the Government ought, without further delay, to do what is yet possible to remedy the wrong done one of its capable and faithful officers.

Your committee, therefore, recommend the passage of the accompanying bill.

VIEW OF THE MINORITY.

Mr. COCKRELL, from the Committee on Military Affairs, to which was referred the bill (S. 1284) for the relief of Sarah K. McLean, widow of the late Lieut. Col. Nathaniel H. McLean, submits the following as the views of the minority:

This bill directs the payment to Mrs. McLean "all back pay and emoluments that would have been payable and due to the said Lieut. Col. Nathaniel H. McLean from July 23, 1864, to the date of his reinstatement, March 3, 1875, according to the rank to which he would have been entitled had he continued in the Army for and during said period."

Colonel McLean was in the year 1863 a major and assistant adjutant-general, and was on duty in Cincinnati, Ohio, under the late General A. E. Burnside. One F. W. Hurtt was also captain and assistant quartermaster and on duty in Cincinnati at the same time, and serious charges were preferred against him, and much contention and friction arose therefrom. And one John H. Dickerson was also captain and assistant quartermaster, on duty in Cincinnati, and charges were also made against him. Correspondence, explanations, etc., were had with these officers.

On July 28, 1863, General Burnside appointed Major McLean "inspector to examine into and report on the manner in which the affairs of the Quartermaster's Department have been conducted by Capt. F. W. Hurtt, assistant quartermaster volunteers, stationed at Cincinnati, Ohio, and to this end ordered him to inspect all of Captain Hurtt's books, letters, accounts, and papers of all descriptions, public and private, relating in any manner, directly or indirectly, to the public service."

On November 23, 1863, General Burnside issued an order convening a general court-martial to meet at Cincinnati on the 1st day of December, 1863, for the trial of such prisoners as may be brought before it. And on the same day General Burnside convened another general court-martial to meet on the 24th day of November, 1863. These courts were convened by Special Orders Nos. 436 and 437.

On November 30, 1863, General H. W. Halleck, general-in-chief, by telegram to the adjutant-general of the Department of Ohio, Cincinnati, stated that the Secretary of War directs that the Special Orders Nos. 436 and 437, of November 23, 1863, convening said courts, be immediately countermanded, and that the cases proposed for trial be referred to the Judge-Advocate-General of the Army.

On January 18, 1864, the Secretary of War convened a general court-martial, to meet at Cincinnati, Ohio, on the 25th day of January, 1864, for the trial of Capt. F. W. Hurtt, assistant quartermaster of volunteers, and such other prisoners as may be brought before it. This court convened, and after a long and patient hearing, on March 19, 1864, sentenced Captain Hurtt to be dismissed the service of the United States, with loss of all pay and allowances now due or to become due. The report of the trial was submitted to President Lincoln on June 13, 1864, and returned by him to the Secretary of War on June 13, 1864, stating: "I do not perceive that there is anything affirmative for me to do in this case." On June 17, 1864, the proceedings, findings, and sentences of the court in said case were approved.

Many charges, counter-charges, criminations, and recriminations were made, and there were complaints against Major McLean, and on October 17, 1868, Major McLean addressed a letter to Brig. Gen. L. Thomas, Adjutant-General U. S. Army, Washington, D. C., as follows:

HEADQUARTERS DEPARTMENT OF THE OHIO,
Cincinnati, Ohio, October 17, 1868.

GENERAL: Major-General Burnside not being here to do so for me, I have the honor to inclose herewith, for information at the War Department, a slip taken from the Cincinnati Times of this date.

The advice of my friends and my first inclination was not to notice the vile attack, but I finally concluded that some notice of it was due to those with whom I am not so well known as at the War Department and in this city.

Very respectfully, your obedient servant,

N. H. McLEAN,
Assistant Adjutant-General.

Brig. Gen. L. THOMAS,
Adjutant-General U. S. A., Washington, D. C.

Accompanying said letter are two communications from one Edgar Conking, published in the Cincinnati Times, copied and replied to by Major McLean, and on October 27 the following letter was written by the Adjutant-General to Major McLean, with the memoranda thereto appearing:

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
October 27, 1863.

SIR: The Secretary of War has seen the slip inclosed in your letter of the 17th October to the Adjutant-General. He directs me to say that it is not satisfactory.

I am, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Assistant Adjutant-General.

Maj. N. H. McLEAN,
Assistant Adjutant-General, Cincinnati, Ohio.

MEMORANDUM.

Order Maj. N. H. McLean, assistant adjutant-general, to report to Brigadier-General Alvord, commanding district of Oregon, Fort Vancouver, for duty.

E. D. TOWNSEND,
Assistant Adjutant-General.

ADJUTANT-GENERAL'S OFFICE, *October 27, 1863.*

General Burnside, early in November, 1863, telegraphed the Secretary of War, earnestly requesting that Major McLean be allowed to remain on duty at his headquarters.

On December 9 the Adjutant-General telegraphed Major McLean at Cincinnati, advising him that the Secretary of War thereby relieved him from all further orders, and ordered him to immediately proceed to Fort Vancouver, as first ordered.

On December 19, 1863, Major McLean telegraphed to the Adjutant-General that he would leave Cincinnati that day for New York en route to the Pacific coast, and on December 23, 1863, Major McLean sailed from New York for the Pacific coast. On January 31, 1864, Major McLean telegraphed Brig. Gen. L. Thomas, Adjutant-General, U. S. Army, that he had arrived on the 17th instant en route to Oregon, but had been detained on account of sickness, but would leave on the 7th of February.

On April 2, 1864, Major McLean tendered his resignation, which, with the indorsements thereon and the accompanying telegrams, are as follows:

OFFICE ACTING ASSISTANT PROVOST-MARSHAL-GENERAL,
AND SUPERINTENDENT VOLUNTEER RECRUITING SERVICE,
Portland, Oregon, April 2, 1864.

GENERAL: I have the honor hereby to tender my resignation as an officer of the U. S. Army.

I am not in arrears to the United States on any account whatsoever. The public funds for which I am responsible are on deposit with Mr. William T. Mattock, designated depository United States, Oregon City, Oregon; and the public property for which I am accountable is now in my possession, ready to be turned over to such officer as may be designated to receive it.

Very respectfully, your obedient servant,

N. H. McLEAN,
Major and A. A. Gen., A. A. P. M. G., and S. V. R. S.

Brig. Gen. L. THOMAS,
Adjutant-General, U. S. A., Washington, D. C.
(Through Col. James B. Fry, Provost-Marshal-General, Washington, D. C.)

[Indorsed.]

Respectfully forwarded to the Adjutant-General, with the recommendation that resignation be accepted, and that an order be made assigning Thomas C. English, cap-

tain Ninth United States Infantry, to duty as acting assistant provost-marshal-general and superintendent volunteer recruiting service and chief mustering and disbursing officer for Oregon and Washington.

JAMES B. FRY,
Provost-Marshal-General.

MAY 19, 1864.

ADJUTANT-GENERAL'S OFFICE, *May, 19, 1864.*

Respectfully submitted to the Secretary of War and recommended for acceptance.

E. D. TOWNSEND,
Assistant Adjutant-General.

Accepted.

EDWIN M. STANTON,
Secretary of War.

[Telegram received at Washington 9 a. m. July 8, 1864, from Oregon, July 6, 1864.]

J. B. FRY:

Can't Captain Owen, Ninth Oregon Infantry, command Fort Vancouver, also muster and disburse? Hope for acceptance of my resignation in time to escape worst of—
N. H. McLEAN.

PORTLAND, OREGON, *July 23, 1864.*

GENERAL: I have the honor to report myself this day relieved in all my duties at this place by Lieut. Col. T. C. English, First W. S. Volunteers, Major Fifth United States Infantry.

I am, general, very respectfully, your obedient servant,

N. H. McLEAN.
Assistant Adjutant-General.

Brig. Gen. L. THOMAS,
Adjutant-General U. S. A., Washington, D. C.

P. S.—My resignation having been accepted by his excellency the President of the United States, I have the honor to state that my address will be Cincinnati, Ohio, care of P. Kilbieth & Co.

Very respectfully, your obedient servant,

N. H. McLEAN.

which says that he was duly relieved from duty July 23, 1864, four months and twenty days after the date of his resignation.

The Hurtt court-martial proceedings and correspondence herein referred to will be found in H. R. Ex. Doc. 255, Forty-third Congress, first session.

Ten years thereafter, on May 22, 1874, the Committee on Military Affairs of the House of Representatives were by resolution instructed to inquire whether Maj. N. H. McLean, late of the Adjutant-General's Department, was not unjustly treated on the trial of Capt. F. W. Hurtt, late assistant quartermaster of U. S. Volunteers, and on his retirement from the Army, and whether the facts disclosed in the record submitted to the House do not call for his reinstatement.

On March 3, 1875, the last day of the Forty-third Congress, the following proceedings were had in the House (see Congressional Record, second session Forty-third Congress, part 3, page 2238):

"Mr. GUNCKEL. I ask unanimous consent to report from the Committee on Military Affairs, for consideration at this time, a bill for the relief of Maj. N. H. McLean, late of the Adjutant-General's Department of the U. S. Army.

"The bill authorizes the President to appoint Maj. Nathaniel H. McLean, late of the U. S. Army, to fill the first vacancy which may occur in the lowest grade of the Adjutant-General's Department; or, if he shall deem it best, to reinstate and retire him on the rank to which he would have attained in the service at the date of the passage of the act.

"Their being no objection, the bill (H. R. 4866) was received, read three times, and passed.

"Mr. Gunckel moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

"The latter motion was agreed to."

The bill was duly reported to the Senate, and on the same day the following proceedings were had in the Senate (see same Record, page 2204):

"Mr. MORTON. I move to proceed to the consideration of House bill No. 4866.

"The bill (H. R. 4866) for the relief of Maj. Nathaniel H. McLean, late of the Adjutant-General's Department of the Army, was read three times, and passed. It author-

izes the President to appoint Maj. Nathaniel H. McLean, late of the U. S. Army, to fill the first vacancy which may occur in the lowest grade of the Adjutant-General's Department, or if he shall deem it best, to reinstate and retire him with the rank to which he would have attained in service at the date of the passage of the act."

The said bill is as follows:

"AN ACT for the relief of Major N. H. McLean, late of Adjutant-General's Department, United States Army.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and is hereby, authorized to appoint Major Nathaniel H. McLean, late of the United States Army, to fill the first vacancy which may occur in the lowest grade of the Adjutant-General's Department, or if he shall deem it best, to reinstate and retire him with the rank to which he would have attained in service at the date of the passage of this act.

"Approved, March 3, 1875."

The bill in the House of Representatives was accompanied with H. R. Report 279. No printed report was made in the Senate, and the bill was not referred to the Committee on Military Affairs of this body.

On March 12, 1875, President Grant sent to the Senate the nomination of Major McLean to be assistant adjutant-general with the rank of lieutenant-colonel, and on the 15th of March, 1875, the nomination was duly confirmed, and on the 18th of March the President issued to him his commission, and on the same day placed him on the retired list of the Army with the rank of lieutenant-colonel, to date from March 3, 1875; and he was accordingly placed upon the retired list with the rank of lieutenant-colonel, and so remained, drawing the pay of lieutenant-colonel from March 3, 1875, up to the date of his death, on June 28, 1884. Ten and more years after his voluntary resignation, by the special act referred to, he was placed in the position he would have attained in the Army had he remained therein, to wit, that of lieutenant-colonel, and for over nine years thereafter remained on the retired list, receiving the pay of lieutenant-colonel, and without ever having made any pretense of claim for pay from the date of his resignation up to March 3, 1885; perfectly content and satisfied with having been restored to the rank he would have attained, and placed upon the retired list, receiving the pay of a retired officer with the rank of lieutenant-colonel up to the date of his death. And now, nearly four years after the date of his death, his widow asks to be paid the back pay and emoluments that would have been due and payable to him from December 23, 1864, to March 3, 1875.

The bill for his relief was passed upon the very last day of the Forty-third Congress, without discussion or explanation. And Colonel McLean was certainly as competent to judge of his rights and privileges under that bill and his restoration to the Army as any one can now be after the lapse of nearly four years from his death. He never made any such claim directly or indirectly. If he had felt himself honorably and justly entitled to all back pay and allowances from the date of his resignation, unquestionably he would have asserted his claim; and if the proper officers had refused to pay the same and the law entitled him to receive it, he could have asserted his claim before the Court of Claims, which would have had full authority and jurisdiction to hear and determine the proper meaning and effect of said act for his relief, and could have rendered judgment in his favor if the said act entitled him to pay and allowances from the date of his resignation. His own construction of that law and of his rights thereunder for the period of nearly ten years should be conclusive as to such rights.

We do not think that the act for his relief, properly construed, entitled him to such back pay and emoluments, and certainly his widow has no shadow of claim to such back pay and emoluments, and there is nothing in the whole proceedings connected with the passage of the bill which intimates any purpose to give him all back pay and emoluments during the time he was a civilian and rendering no kind of service whatever for the Government of the United States, and having all of his own time and labor and means to devote to his own interests. And it would be a very dangerous precedent to pass this bill.

F. M. COCKRELL.
WILLIAM B. BATE.

EXCHANGES THROUGH THE UNITED STATES MAIL.

MAY 6, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HENDERSON, of North Carolina, from the Committee on the Post-Office and Post-Roads, submitted the following

REPORT:

[To accompany H. R. 8606.]

The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 313) to facilitate exchanges through the United States mail, have considered the same and respectfully recommend that the accompanying bill be adopted as a substitute therefor, and that the said bill, as amended by the substitute, do pass.

The committee beg leave to call attention to the main features of the bill. It furnishes, in compliance with an almost universal demand, a convenient method of transmitting by mail fractional sums in place of subsidiary coin, which is not suited for such transmission and is frequently lost in the mails. Postage stamps, so frequently used, were never intended for any such purpose. The bill provides for the issue of postal fractional notes, free of cost to the people and with scarcely any expense to the Government. These postal fractional notes will be found in every post-office, and will be in universal use by the people everywhere. The people in the rural districts are in great need of the conveniences which this bill will provide.

REPORT ON WAGES.

MAY 7, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BYNUM, from the Committee on the Eleventh Census, submitted the following

R E P O R T:

[To accompany H. Res. 71.]

The Committee on the Eleventh Census, to which was referred the joint resolution (H. Res. 71) to authorize the Superintendent of the Census to continue the report on wages by Joseph D. Weeks, having had the same under consideration, respectfully report that the same be amended as follows:

Strike out the words "Superintendent of Census" in line 3, and insert the words "Secretary of the Interior" instead thereof.

Also, add as an additional section, to be numbered section 2, the following:

That all mail matter of whatever class, relative to this report and the investigation undertaken in connection with same, and indorsed, "Official business, Department of the Interior, wages investigation," shall be transported free of postage.

Also, that section 2 of said resolution be numbered section 3.

Also, strike out the words "Superintendent of Census" in the title, and insert instead thereof the words "Secretary of the Interior."

And when so amended that said resolution be passed.

The purpose of the resolution is to enable the Secretary of the Interior to employ Joseph D. Weeks to continue and complete, as a part of the Eleventh Census, the work of collecting and compiling the statistics of wages as begun and made by him in volume No. 20 of the Tenth Census.

The work has been accepted by statisticians of all parties as the most accurate and reliable that has yet been collected and published, and the committee is of the opinion that a continuation and completion of the work as a part of the Eleventh Census will be a valuable addition thereto.

DEED AND OTHER RECORDS OF THE OFFICE OF INDIAN
AFFAIRS.

MAY 7, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. BYNUM, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany S. 1793.]

The Committee on the Judiciary, to which was referred the bill (S. 1793) entitled "An act to legalize the deed and other records of the Office of Indian Affairs and to provide and authorize the use of a seal by said office," having duly considered the same, respectfully recommend its passage.

The importance of the measure and the necessity for its passage is fully stated in House Ex. Doc. No. 73, Fifty-second Congress, first session.



FRANCIS L. ABBOT.

MAY 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 7283.]

The Committee on War Claims, to whom was referred the bill (H. R. 7283) entitled "A bill for the relief of Francis L. Abbot, administrator of Thomas J. Treadwell," report:

Thomas J. Treadwell served in the U. S. Army as a cadet at the West Point Military Academy for about four years prior to July 1, 1854, when he was commissioned second lieutenant, ordnance, in the U. S. Army, and served therein continuously as a commissioned officer till August 2, 1879. During all this time he was thus commissioned the following provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per centum of their yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services while thus serving as a commissioned officer in the U. S. Army merely what other officers of his grade were generally paid, and allowed no increase of compensation whatever on account of his prior length of service in the U. S. Army of the duration of about four years at the Military Academy. For this reason it is alleged he was short-paid for his services rendered during the time he was a commissioned officer, as aforesaid, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists, or may exist, to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

Notwithstanding the clear and explicit provisions of law above cited, the accounting officers of the Treasury are now declining to yield to the rule therein laid down for the computation of the additional ration or allowance to be given to a commissioned officer, for and on account of his prior length of service in the Army, although they have in some instances, in the past, permitted the said rule to govern in such computations.

The commutation value or price, thus put in controversy, of the one additional ration per diem for every five years of prior service, com-

putes to about the sum of \$2,100, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services rendered by a distinguished officer); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

O

MARY CLARE KELLY.

MAY 7, 1892.—Laid on the table and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

ADVERSE REPORT:

[To accompany S. 2004.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 2004) granting a pension to Mary Clare Kelly, have carefully considered the same, and now submit the following report:

This bill passed the Senate, April 14, 1892. Accompanying the bill is the report of the Senate committee, which embraces the evidence submitted in the case, and which is as follows, viz:

The Committee on Pensions, to whom was referred the bill (S. 2004) granting an increase of pension to Mary Clare Kelly, have examined the same and report:

This is a bill to increase the pension of Mrs. Mary Clare Kelly, widow of Brig. Gen. Benjamin F. Kelly. Gen. Kelly was a Virginian and raised the first regiment for the defense of the Union from that State. The stand he took and his energetic and brave conduct were of the greatest value to the Union cause. He commanded the Department of West Virginia, and received a wound that was supposed to have been fatal, but he recovered as if by a miracle. He became impoverished by reason of his Union sentiments and participation in the Federal service, and having never recovered from the effects of his wound, he remained in poverty, leaving nothing for the support of his family. His widow was recently pensioned at the rate of \$30 a month, which is the highest rate allowable under the general law.

It has been the habit of Congress to increase the pensions of the widows of the higher grade of officers, especially in cases corresponding with that of Gen. Kelly, and the committee regard this as a proper case for special legislation.

The bill is reported with an amendment striking out the words "one hundred" in line 7, and inserting "fifty;" and inserting after the word month, in the seventh line, the words "in lieu of the pension she is now receiving;" and as so amended is reported favorably with a recommendation that it do pass.

The Committee of the House on Invalid Pensions do not and can not concur in the favorable recommendation which concludes the aforesaid report, for we feel that the facts stated in the report do not warrant any increase.

The general pension law, which was enacted and has been in force for many years, makes the distinction that the widow of a private soldier who has lost his life because of his military record shall receive \$12 per month as a pension; the widow of a second lieutenant, \$15; the widow of a first lieutenant, \$17; the widow of a captain, \$20; the widow of a major, \$25; the widow of a lieutenant-colonel, colonel, and all general officers, \$30.

This distinction, whether right or wrong, is made by the general law. The widow of Gen. Kelly is receiving a pension already, under that general law, through the Pension Bureau, and we submit that no reason known to us justifies us in increasing that pension beyond what the general law grants her.

Your committee submit further, as to the fact that numerous precedents may be found for the favorable recommendation of this bill in the action of former committees in similar cases, that to further follow such precedents would eventually grow, if it has not already grown, into an abuse of the power of Congress to appropriate money in a manner that clearly stamps the whole as class legislation.

With profound respect for the memory of the gallant soldier and with a similar feeling toward his widow, the beneficiary in this bill, your committee report adversely to the bill under consideration, and recommend that it be indefinitely postponed.

○

BRIDGES OVER CERTAIN RIVERS IN ALABAMA.

MAY 7, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. GEARY, from the Committee on Interstate and Foreign Commerce,
submitted the following

REPORT:

[To accompany S. 2021.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 2021) granting the right and authority to the Mexican Gulf, Pacific and Puget Sound Railroad Company, a company organized under the laws of the States of Florida and Alabama, to build one bridge over each of the following-named rivers in the State of Alabama, namely: The Alabama River, the Warrior River, the Sipsey River, and the Tennessee River; the said bridges to be used by the Mexican Gulf, Pacific and Puget Sound Railroad Company in carrying freight and passengers by rail and otherwise, report the same back without amendment and recommend that the bill do pass.

Your committee find this bill to be in exact accordance with the recommendations of the Chief of Engineers of the United States Army, who, in a letter of February 24, 1892, to the Secretary of War, in regard to this bill, remarks that, his recommendations adopted, he "knows of no objections to its passage by Congress, so far as the interests of navigation are concerned."

○

BRIDGE ACROSS MORRIS AND CUMMINGS SHIP CHANNEL,
IN ARANSAS COUNTY, TEX.

MAY 7, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. GEARY, from the Committee on Interstate and Foreign Commerce,
submitted the following

REPORT:

[To accompany H. R. 8580.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 8580) authorizing Aransas Harbor Terminal Railway Company to construct a bridge across the Corpus Christi Channel, known as the Morris and Cummings Ship Channel, in Aransas County, Tex., report the same back with the recommendation that it do pass.

This bill is in precise accordance with the suggestions of the Chief of Engineers of the U. S. Army contained in a report from him in regard to it, under date of May 3, 1892, in which he remarks that he "knows of no objection to its passage (in this form) by Congress so far as the interests of navigation are concerned."

○

BRIDGE ACROSS THE SAVANNAH RIVER.

MAY 7, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. GEARY, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT:

[To accompany H. R. 7720.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 7720) to authorize the construction of a bridge across the Savannah River, report the same back with amendments, and recommend that the bill as amended do pass.

After section 3, insert a new section 4, as follows:

SEC. 4. That all railroad companies desiring the use of said bridges and its approaches shall have and be entitled to equal rights and privileges relative to the passage of trains over the same upon payment of a reasonable compensation for such use; and in case the owner or owners of said bridge and the several railroad companies, or any of them, desiring such use shall fail to agree upon the sum or sums to be paid, or upon rules and conditions to which each shall conform in using said bridge and approaches, all matters at issue between them shall be decided by the Secretary of War upon a hearing of the allegations and proofs of the parties.

Change section 4 to section 5.

Section 5, line 3, for "two years" substitute the words "one year"; and for "four" substitute the word "three," and then make section 5 section 6.

A letter of the Chief of Engineers of the U. S. Army, under date of April 7, 1892, to the Secretary of War, in regard to H. R. 7720, is herewith submitted and made a part of this report.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., April 7, 1892.

SIR: I have the honor to return herewith letter of the 31st ultimo of the Committee on Interstate and Foreign Commerce, House of Representatives, inclosing, for views of the War Department thereon, a copy of H. R. 7720, Fifty-second Congress, first session, "A bill to authorize the construction of a bridge across the Savannah River."

It is recommended that the bill be amended as follows:

After section 3 insert a new section 4, as follows:

"SEC. 4. That all railroad companies desiring the use of said bridge and its approaches shall have and be entitled to equal rights and privileges relative to the passage of trains over the same upon payment of a reasonable compensation for such use; and in case the owner or owners of said bridge and the several railroad companies, or any of them desiring such use, shall fail to agree upon the sum or sums to be paid, or upon rules and conditions to which each shall conform in using

said bridge and approaches, all matters at issue between them shall be decided by the Secretary of War upon a hearing of the allegations and proofs of the parties."

Change section 4 to section 5, and section 5 to section 6.

Section 5, line 3, for "two years" substitute the words "one year," and for "four" substitute the word "three."

A copy of the bill with the proposed amendments indicated thereon is inclosed, and, as so amended, I know of no objections, so far as the interests of navigation are concerned, to its passage by Congress.

Very respectfully, your obedient servant,

THOS. LINCOLN CASEY,
Brig. Gen., Chief of Engineers.

Hon. S. B. ELKINS,
Secretary of War.

O

PAY OF STENOGRAPHER AND ASSISTANT CLERK TO COMMITTEE INVESTIGATING PENSION BUREAU.

MAY 9, 1892.—Ordered to be printed.

Mr. RUSK, from the Committee on Accounts, submitted the following

REPORT:

[To accompany Mis. Doc. —.]

The Committee on Accounts, to whom was referred the resolution of April 5, 1892, submitted by Mr. Enloe, of Tennessee, have had the same under consideration and respectfully recommend that the same do pass, with the following amendment: Strike out all that part of the resolution that refers to C. A. Palmer.



THOMAS P. BELL.

MAY 9, 1892.—Laid on the table and ordered to be printed.

Mr. RUSK, from the Committee on Accounts, submitted the following

REPORT:

[To accompany Mis. Doc. —.]

The Committee on Accounts, to whom was referred the accompanying resolution submitted by Mr. Compton, of Maryland, respectfully report:

Thomas P. Bell was employed in the folding room of the House of Representatives for nearly twenty years. His services were continuous and laborious and he performed his duties to the entire satisfaction of every doorkeeper he was employed under. The action proposed by the resolution is pursuant to precedents in numerous cases, among which may be cited to the widows of William Hincks, an official reporter; James G. Wintersmith, doorkeeper; Neill S. Brown, reading clerk, and John J. McElhone, official reporter. Bell left a surviving widow and a large family of dependent children, and your committee believe that no more deserving case could be cited for the action proposed. They therefore recommend the passage of the resolution.

○

C. S. ULINE.

MAY 9, 1892.—Ordered to be printed.

Mr. DICKERSON, from the Committee on Accounts, submitted the following

REPORT:

[To accompany Mis. Doc. —.]

The Committee on Accounts, to whom was referred the resolution of the House of March 29, 1892, submitted by Mr. Castle, have had the same under consideration and beg leave to report:

The clerk to the Committee on Mileage was appointed on the 12th day of December, 1891, and Mr. Uline was sworn in as clerk and served in that capacity until all of the mileage accounts were passed on (a period of sixty days).

This committee did not allow a clerk to the Committee on Mileage for the reason that as soon as the mileage accounts were passed on there were no further duties for a clerk to perform. The services herein were rendered before it was ascertained that no clerk would be assigned; therefore your committee recommend unanimously the passage of the resolution.



CLOSETS AND CORRIDORS IN THE TERRACE.

MAY 9, 1892.—Ordered to be printed.

Mr. DICKERSON, from the Committee on Accounts, submitted the following

REPORT:

[To accompany Mis. Doc. —.]

The Committee on Accounts, to whom was referred the resolution submitted by Mr. Willcox on February 10, 1892, in reference to the closets and corridors in the terrace, beg leave to report that the committee has given the matter careful attention and consideration. This closet is situated on the House side of the terrace which has recently been completed, and there are a number of committee rooms situated on that floor. It is absolutely necessary that this closet should be kept in perfect sanitary condition for the good health of all persons occupying rooms in that portion of the Capitol.

The propriety of putting the control and management of this closet and corridor under the Architect of the Capitol, authorizing him to employ some competent person to care for the same, is evident, and your committee unanimously recommend the passage of the resolution.

○

LEGAL HEIRS OF BENJAMIN METOYER.

MAY 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BRUNNER, from the Committee on Private Land Claims, submitted the following

REPORT:

[To accompany H. R. 5431.]

The Committee on Private Land Claims, to whom was referred the bill (H. R. 5431) authorizing the issuing of patents for locations with certificates granted under the act of Congress approved August 5, 1854, entitled "An act for the relief of the legal heirs of Benjamin Metoyer," respectfully report as follows:

The committee requested an investigation and an opinion as to the propriety of this bill from the Commissioner of the Land Office, and have received the following in response thereto, which they make a part of this their report:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., March 19.

SIR: I am in receipt of a communication dated the 12th instant from Hon. Bellamy Storer, inclosing a copy of H. R. 5431, Fifty-second Congress, first session, entitled "A bill authorizing the issuing of patents for locations with certificates granted under the act of Congress approved August fifth, eighteen hundred and fifty-four, entitled 'An act for the relief of the legal heirs of Benjamin Metoyer.'"

Mr. Storer, on behalf of the subcommittee of the Committee on Private Land Claims, House of Representatives, to which this bill has been referred, requests a full report in the premises.

The language of the proposed legislation is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the case of all locations of land heretofore made, or which hereafter may be made, with certificates issued under the act of Congress approved August fifth, eighteen hundred and fifty-four, entitled 'An act for the relief of the legal heirs of Benjamin Metoyer,' it shall be lawful for the Commissioner of the General Land Office, and he is hereby directed, to cause patents to issue to the heirs and legal representatives of Benjamin Metoyer, or their assigns, who have made or may make such locations: *Provided*, That said locations be not in conflict with prior valid appropriations of land made in conformity with the laws of the United States."

I have the honor to report that the certificates mentioned in the bill were issued by this office June 26, 1884, upon application of the parties in interest, and pursuant to the provisions of the first section of the act of Congress approved August 5, 1854, entitled "An act for the relief of the legal heirs of Benjamin Metoyer."

The scrip was issued in order that said heirs might be enabled to obtain the indemnity provided for in the act. There were three pieces; Nos. 1 and 2 being for 40 acres each, and No. 3 for 43.12 acres, aggregating 123.12 acres, the quantity of land to be located under the terms of the aforesaid law and the scrip was delivered to Hon. N. C. Blanchard of the House of Representatives on June 27, 1884.

Herewith I transmit a copy of certificate No. 1 for 40 acres, marked A.

The proper scrip docket in this office shows that said certificate No. 1 was located at the district land office at Aberdeen, Dak., September 9, 1887, as set forth in Mr. Storer's communication.

It will be observed that the act of August 5, 1854, provides in the second section for the patenting of certain lands *confirmed in place*, but that no provision was made for patenting the 123.12 acres of land awarded to the heirs of Metoyer as indemnity for lands lost.

Accordingly, when the location of certificate No. 1 at Aberdeen, Dak., had been found proper and correct, no patent could be issued therefor; but the Acting Commissioner of the General Land Office under date of October 18, 1888, issued, recorded, and delivered to the interested parties, a certificate approving said location; and as "evidence of full relinquishment by the United States" of its interest in the land located. (Copy herewith marked B.)

There can be no objection, in my opinion, to a law providing for the formal patenting of the location No. 1, above referred to, or of whatever lawful locations may be hereafter made with certificates Nos. 2 and 3, which it is supposed are outstanding and have not yet been applied on the public domain.

I respectfully recommend that in line 11 of the bill, after the word "locations," the following words be added, viz: "After such locations have been approved by said Commissioner as regularly made and in accordance with law."

With this alteration to the bill, I see no reason why the same should not become a law.

The letter addressed to me by Hon. Mr. Storer is herewith transmitted.

Very respectfully, your obedient servant,

THOS. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, April 6, 1892.

SIR: I transmit herewith copy of the report of the Commissioner of the General Land Office, dated March 19, 1892, together with inclosures upon H. R. bill No. 5431, "authorizing the issuing of patents for locations with certificates granted under the act of Congress, approved August fifth, eighteen hundred and fifty-four, entitled 'An act for the relief of the legal heirs of Benjamin Metoyer.'"

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. A. P. FITCH,
Chairman Committee on Private Land Claims, House of Representatives.

By investigation outside of the report of the Interior Department it appears that the act of Congress of August 5, 1854, provided that patents should issue to the Metoyer heirs for lands theretofore confirmed to them, but did not provide for the issue of patents in the future for the lands granted by that act. The present bill simply gives the parties locating under the act of 1854 the same rights that were granted to the same parties at that time for lands which they had located before 1854.

Acts granting patents to lands upon location thereof in the future are common in our statute books. No right of ownership remains in the United States or is now sought to be granted. The reason for giving patents to the locators of these lands is simply to avoid any objection on the part of purchasers and to make the lands more easily transferable for the future.

The amendment suggested by the honorable Commissioner of the Land Office is in the committee's opinion eminently a proper one, and the committee recommends its adoption.

The committee recommend the passage of the bill as thus amended.

AMERICAN REGISTER FOR THE STEAMER FOXHALL.

MAY 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FOWLER, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT:

[To accompany H. R. 3556.]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H. R. 3556) to provide an American register for the steamer *Foxhall*, of New Orleans, La., have considered the same and make the following report:

A similar bill was reported by Mr. Price, from this committee, during last session of Congress, but failed to be reached on the Calendar.

The Senate Committee on Commerce reported a similar bill this session, which passed the Senate and is now on the Speaker's table.

The Senate report is so complete it is adopted by your committee and the passage of the bill recommended.

SENATE REPORT.

The Committee on Commerce, to whom was referred the bill (S. 153) to provide American registers for the steamers *Foxhall* and *S. Oteri*, of New Orleans, La., having duly considered the same, report as follows:

Your committee has been furnished no evidence warranting the issue of a register to the steamship *S. Oteri*, and therefore recommends amendments to said bill designed to confine its provisions solely to the *Foxhall*.

Very complete and exhaustive evidence has been submitted in the case of the *Foxhall*. Your committee has examined it all thoroughly and find the facts to be as follows:

The steamship *Foxhall* was launched at Newcastle on the Tyne, England, in November, 1885, having been built by Messrs. Wickum, Richardson & Co. Her proportions were: Length, 190 feet; breadth, 28 feet 2 inches, and her draft 20 feet, with a tonnage of 540 tons net. While engaged in the South American trade in July, 1887, she was wrecked by grounding on Colorado Reef, Cuba, and was from there brought to the port of New Orleans for repairs. Subsequently, it being found that her injuries were more serious than at first supposed, she was brought to the port of Philadelphia and placed in the yard of William Cramp & Sons. The repairs consequent upon the wreck of July, 1887, made by the Whitney Iron Works, of New Orleans, and Cramp & Sons, of Philadelphia, are shown by receipted bills to have amounted to \$9,143.87.

After leaving Cramp's yard the *Foxhall* was again put into the South American trade, but had hardly started in business before she was again wrecked off the coast of Nicaragua, in September of the same year. The injuries then sustained were of a still more serious character than in the first case; thirty-five of her frames were broken, a large number of sheathing plates torn off, and the ship rendered totally unseaworthy. A wrecking tug was sent to her relief, and the *Foxhall* towed to New Orleans for repairs. These were made principally by the Whitney Iron Works, and are shown by receipted bills to have amounted to \$20,400.76.

In January, 1891, it was found that the repairs put upon this steamer after the wreck of September, 1887, and which were completed in the spring of 1888, were not sufficient to render her thoroughly seaworthy, and the *Foxhall* was again sent to the yard of Cramp & Sons, in Philadelphia, to be overhauled and repaired. This work was done at a cost of \$21,993.89, for which receipts are submitted.

These repairs may be summarized as follows:

Repairs caused by wreck of July, 1887	\$9,490.79
Repairs caused by wreck of September, 1887.....	20,400.76
Repairs made in February, 1891, at Cramp & Sons'	21,993.89

Total amount of repairs made in American shipyards and necessary
to put steamer in good condition after having been twice wrecked.. 51,885.44

It is further proven that the *Foxhall* was purchased from W. W. Phipps, the original owner, by Lawrence C. Fallon, a resident of New Orleans, being president of the Mutual National Bank of that city, and a native-born American citizen, for the sum of \$55,000. Messrs. Cramp & Sons and Mr. John Patterson, of Philadelphia, all thoroughly competent to form a correct estimate of a ship's value, and reliable men, appraise the *Foxhall* at \$50,000, under date of February, 1891.

To the facts above set forth Mr. Fallon makes sworn statement, and William Cramp & Sons, together with the president of the Whitney Iron Works, substantiate the correctness of their bills.

Your committee, while believing that rigid scrutiny should be brought to bear on the evidence submitted in support of bills for American registry, and great care and prudence exercised in giving favorable consideration thereto, are unanimously of the opinion that the *Foxhall* presents a meritorious and deserving instance where the intent and spirit of existing law will be observed by granting the relief sought for, and accordingly recommend the passage of the bill.

SARAH M. CRANSTON.

MAY 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PICKLER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 6584.]

The Committee on War Claims, to whom was referred the bill (H. R. 6584) entitled "A bill for the relief of Sarah M. Cranston, administratrix of James R. Cranston," report:

James R. Cranston served as an enlisted man in the Twenty-fourth Massachusetts Volunteers, U. S. Army, from September 9, 1861, to August 31, 1864; next as a commissioned officer therein, captain One hundred and nineteenth United States Colored Troops, from August 31, 1864, to April 27, 1866, and next as a commissioned officer in the United States regular Army from August 24, 1867, to June 18, 1878. During all the time he served as such commissioned officer the following provisions of law, respectively, were in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per centum of their yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes)

He was paid for his services while he thus served as a commissioned officer in the U. S. Army merely what other officers of his grade were generally paid, and he was paid or allowed no increase of compensation whatever for his services as a commissioned officer in the U. S. Army prior to June 18, 1878, on account of his said prior length of service therein as an enlisted man. For this reason it is alleged he was short-paid for his services as a commissioned officer prior to June 18, 1878, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining his demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$905, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim; it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of her claim if she can.

The committee recommend that the bill do pass.

CHARLES F. GILLIES.

MAY 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HULL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 8453.]

The Committee on Military Affairs, having had under consideration the bill (H. R. 8453) for the relief of Charles F. Gillies, beg to submit the following report:

It will be seen by the military record of the said Charles F. Gillies, herewith submitted and made a part of this report, that this soldier enlisted in the regular Army, October 29, 1847, and served continuously until discharged by reason of surgeon's certificate of disability in 1881. During the war he was major of the Twenty-first Pennsylvania Volunteer Cavalry, and, according to the testimony of the officers of that regiment, did brave, gallant, and meritorious services until wounded in battle, which wound made it impossible for him to discharge the duties of the office of major. As soon as he was sufficiently recovered he was recommissioned, January 31, 1865, and continued in the service, although badly wounded, until the close of the war. When mustered out of the volunteer Army he reënlisted in the regular service, and by reënlistment continued therein until mustered out on account of disabilities, as above recited.

Your committee believe that it is simply an act of justice to a brave and faithful soldier, who entered the Army in his youth and served his Government continuously until disabled by age and wounds, to place him on the retired list of the Army with the rank of first sergeant of cavalry. His long service in the Army has disqualified him from following any other line of business, and it would be an ungrateful act in the Government to now refuse the compensation which, while recognizing his long and faithful service, will enable him to pass the few remaining days of his life in comparative comfort and amid associations for which his whole life and training have peculiarly fitted him.

The report of the Adjutant-General and the resolutions of his comrades of the Twenty-first Pennsylvania Volunteer Cavalry are herewith submitted.

Your committee would further state that this action is in accord with personal letters and recommendations by Gen. Sheridan, Gen. Crook, Gen. David McM. Gregg, and others.

The committee recommend that the bill be amended by striking out the words "first lieutenant" and insert in lieu thereof the words "first sergeant." Also insert in line 8, after the word "grade," the words "with full allowance of pay accruing from twenty-four years' service in the Army;" and so amended that the bill do pass.

Hon. T. M. MAHON offered the following resolution, which was adopted:

"Whereas our comrade, Maj. C. F. Gillies, has served his country long and well, and is now incapacitated, on account of disability caused by wounds and exposure in active service in the Army of the United States; and

"Whereas we, his comrades in arms, members of the Twenty-first Pennsylvania Volunteer Cavalry, now assembled at our annual reunion, have been pained to hear that our gallant comrade is an invalid in the Soldiers' Home at Washington, D. C.: Therefore, be it

"Resolved, That we deem it but an act of justice that this honorable and brave soldier be placed on the retired list of the Army.

"Resolved, That we do hereby request the proper authorities to have Comrade Gillies placed on the retired list of the Army officers.

"Resolved, That the president of our association appoint a committee of three to assist our comrade in having justice done him in this matter.

"Resolved, That a certified copy of these resolutions be forwarded to Maj. Gillies."

President appointed the following committee to carry out the provisions of the foregoing resolutions: Hon. T. M. Mahon, Dr. E. C. Kitchen, and Sergt. P. R. Welsh.

GETTYSBURG, PA., *March 4, 1891.*

I hereby certify that the inclosed is a true copy of preamble and resolutions passed at the last meeting of the Twenty-first Pennsylvania Cavalry Association, at Gettysburg, Pa., February 6, 1891, and that they have my most emphatic indorsement.

ROBERT BELL,
President Twenty-first Pennsylvania Cavalry Association.

READING, PA., *March 28, 1881.*

MY DEAR SIR: In acknowledging the receipt of your letter, I beg to state that I remember you very well and I may add that I feel the most lively interest in the success of your application for appointment to a commission in the regular Army. Surely no one will say that you do not deserve such reward.

The Twenty-first Pennsylvania Cavalry, of which you were a major, whilst serving in the division commanded by me, had opportunities of rendering most distinguished service, and the history of the war tells how bravely these opportunities were embraced. I know that you were one of the best officers of the regiment. Your twenty-four years of faithful service ought not to go unrewarded, and I look forward with confidence to the announcement of your appointment. You began your service well in that grand old regiment, the First Dragoons; continued it well in the Second Cavalry Division, Army of the Potomac, and, I trust, will end it in comfort as a retired officer of the U. S. Army.

Sincerely, yours,

D. MCM. GREGG,
Late Brigadier and Brevet Major General Volunteers.

Sergt. CHARLES F. GILLIES,
U. S. Army.

GOVERNOR'S OFFICE,
Soldiers' Home, February 24, 1892.

I most heartily concur in any and all movements to place Charles F. Gillies, ex-major Twenty-first Pennsylvania Cavalry, on the retired list of the Army as a lieutenant. Maj. Gillies' services were most valuable in the war and his high and honorable character gained among the inmates of the Soldiers' Home, where he has served as an official on very small pay, has enlisted the sympathy of the officers and inmates in the success of the proposed promotion and retirement.

O. B. WILLCOX,
Brigadier-General and Governor.

Case of Charles F. Gillies, late major Twenty-first Pennsylvania Cavalry Volunteers.

RECORD AND PENSION DIVISION, *May 5, 1892.*

Charles F. Gillies was mustered into service as adjutant with the field and staff of the Twenty-first Regiment Pennsylvania Cavalry Volunteers, July 27, 1863, to serve six months, and as major of the same regiment to date August 26, 1863. The rolls of the field and staff to October 31, 1863, report him present. Regimental returns report him as follows: October, 1863 (first on file), present; November, present, in com-

mand of regiment since November 12, 1863; December, present; January, 1864, present, with remark, "commanding regiment since November 12, 1863."

This regiment was reorganized in February, 1864, to serve three years, and on April 19, 1864, Charles F. Gillies was mustered in as major Twenty-first Pennsylvania Cavalry, reorganized for three years' service, with retained rank from August 27, 1863, the date of his original muster as major.

The rolls of the field and staff of the Twenty-first Pennsylvania Cavalry (three years) to April 30, 1864, report him present; May and June, 1864, absent, wounded in action June 18, 1864, at Petersburg, Va.; in hospital at Annapolis, Md.; July and August, 1864, absent, wounded. The regimental return for September, 1864, bears the same report.

He was discharged the service October 5, 1864, on account of physical disability from wounds received in action.

He reentered the service and was mustered in as major, Twenty-first Pennsylvania Cavalry, to date January 31, 1865; is reported present on the rolls to June 30, 1865, and was mustered out with the field and staff of the regiment July 8, 1865.

The medical records show Charles F. Gillies, major Twenty-first Pennsylvania Cavalry, wounded in right knee, severe, at the battle of Petersburg, Va., June 18, 1864; admitted to hospital steamer *Connecticut* June 19, 1864, with a gunshot wound in knee, and transferred to general hospital, Annapolis, Md.; admitted to Division No. 1, general hospital, Annapolis, Md., June 20, 1864, with gunshot wound right knee joint, not opened; diagnosis also shown as gunshot wound right knee, inner side; granted leave of absence July 8, 1864; returned from leave of absence October 5, 1864, and discharged the service by special orders of that date.

The records also show that this officer was present with his regiment and in action as follows: June 1 to 12, 1864, in front of Cold Harbor, Va.; June 3, 1864, in action at Cold Harbor, Va.; June 18, 1864, in action at Petersburg, Va.; March 31, 1865, in skirmish at Dunwiddie, Va.; April 5, 1865, in action at Amelia Springs, Va.; April 7, 1865, in action at Farmville, Va.; and April 9, 1865, in action at Appomattox, Va.

Respectfully submitted.

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

The SECRETARY OF WAR.

Military history of Charles F. Gillies.

Enlisted October 29, 1847; assigned to Company C, Second Regiment United States Dragoons, as bugler; served five years; honorably discharged as bugler October 29, 1852.

Enlisted December 23, 1854; assigned to Company A, First Regiment United States Dragoons; promoted to corporal September 7, 1855, and subsequently sergeant; appointed a first sergeant December 21, 1856; honorably discharged a first sergeant December 23, 1859.

Mustered into United States Volunteer Cavalry as second lieutenant, "Kentucky Horse," June 16, 1861—merged into Third Regiment Pennsylvania Cavalry; promoted to first lieutenant of Company D, Third Pennsylvania Cavalry, December 5, 1861; promoted to captain of Company A, March 11, 1862; resigned June 23, 1862; honorably discharged July 1, 1862.

Engaged in recruiting and organizing other volunteer forces for the field.

Mustered into service as first lieutenant and adjutant of the Twenty-first Pennsylvania Cavalry July 27, 1863; promoted to major August 26, 1863; discharged for physical disability resulting from wound received in action October 5, 1864; disability removed as per letter, Adjutant-General's Office, dated Washington, D. C., January 18, 1865; recommissioned to date from discharge; mustered into service January 31, 1865.

Acting provost-marshal, Cavalry Corps, Army of the Potomac, from March 28, 1865, until after the surrender of the Army of Northern Virginia at Appomattox, Va., April 9, 1865.

Honorably discharged at Lynchburg, Va., July 8, 1865.

Enlisted in general mounted service, U. S. Army, April 9, 1870; assigned to permanent company at Carlisle Barracks, Pa.; promoted to corporal; served five years; honorably discharged April 9, 1875.

Reenlisted April 9, 1875; assigned to permanent company; promoted to lance sergeant; served five years; honorably discharged April 9, 1880.

Continued in service by reenlisting April 10, 1880, and was discharged a year later by reason of surgeon's certificate of disability.

Twenty-four years' service.

CHAPTER IV

The first part of the chapter discusses the importance of the study of the history of the United States. It is a subject of great interest and importance to all Americans. The study of our history helps us to understand our present and to plan for our future. It shows us the progress we have made and the challenges we still face. It also helps us to appreciate the sacrifices of our ancestors and the achievements of our heroes. The study of history is not only a duty but also a privilege. It gives us a sense of identity and purpose. It helps us to understand our place in the world and our responsibility to our fellow citizens. The study of history is a lifelong journey. It is a journey that never ends. It is a journey that is worth every step.

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AMERICAN REGISTER FOR THE BARGE SEABIRD.

MAY 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FOWLER, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT:

[To accompany S. 869.]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (S. 869) to provide an American register for the barge *Seabird*, of Perth Amboy, N. J., have considered the same and report as follows:

A similar bill was reported from this committee during the second session of the last Congress by Mr. Bingham, of Pennsylvania, and passed the House. It was favorably reported from the Committee on Commerce of the Senate by the chairman of that committee, Senator Frye, but failed to be reached for action.

The report of the Senate Committee on the present bill is so full and complete that it is adopted by your committee as its own, and the passage of the bill recommended.

SENATE REPORT.

The Committee on Commerce, to whom was referred the bill (S. 869) to provide an American register for the barge *Seabird*, of Perth Amboy, N. J., having duly considered the same and accompanying evidence, report as follows:

It is shown that the *Seabird*, a barge of British build, was injured through collision with an unknown vessel during December, 1888, while off the coast of New Jersey, so seriously as to cause her abandonment by the crew; that she was subsequently towed to New York by the tug *Moran*, libeled, and sold at United States marshal's sale to M. H. Gregory, of Long Island, who, on November 7, 1889, sold the barge to John Scully, an American citizen and the present owner, for \$350. At the time of this latter sale the *Seabird* was lying in Cow Bay filled with water and in a totally unseaworthy condition.

Shortly after her purchase by Mr. Scully the barge was towed to South Amboy, N. J., and repairs to the amount of \$2,004 put upon her by Walter Thompson, a shipsmith of that place, as shown by receipted vouchers.

It is further represented to your committee that while the *Seabird* is now in seaworthy condition the owner is unable to secure registry for her from the fact that she was wrecked outside of American waters, and as without it she is valueless for all purposes of transportation, your committee recommend the passage of the accompanying bill, believing that in view of the conditions set forth above no infringement of the spirit of the general law will be caused thereby.

URGENT DEFICIENCY APPROPRIATION BILL.

MAY 9, 1892.—Ordered to be printed.

Mr. SAYERS, from the Committee on Appropriations, submitted the following

REPORT:

[To accompany H. R. 7818.]

The Committee on Appropriations, to whom was referred the bill (H. R. 7818) to provide for certain of the most urgent deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1892, and for other purposes, together with the amendments of the Senate thereto, having considered the same, beg leave to report as follows:

They recommend disagreement to all of the amendments of the Senate numbered 1 to 18, inclusive.

○

W. H. WARD.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LOUD, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 577.]

The Committee on Claims, to whom was referred the bill (S. 577) for the relief of W. H. Ward, respectfully report that the committee have considered the same, which is identical with H. R. 3312 (Report 1196), and recommend the passage of the same.

Report 1196 is herewith appended and made a part of this report.

[House Report No. 1196, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred bill (H. R. 3312) for the relief of W. H. Ward, beg leave to report the same with the recommendation that it do pass.

A similar bill has passed the Senate in the Forty-fourth, Fiftieth, and Fifty-first Congresses, and has been favorably reported from the Committee on Claims of the House in the Fifty-first Congress, and also this session.

Report No. 3482, made from the Committee on Claims of the Fifty-first Congress, so fully sets forth the facts that your committee adopt the same and make it a part of this report.

House Report No. 3482, Fifty-first Congress, second session.

Mr. RAY, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 949.]

The Committee on Claims, to whom was referred the bill (S. 949) for the relief of W. H. Ward, having had the same under consideration, respectfully report as follows:

The Committee on Patents of the Senate made a report, No. 119, by Hon. Henry M. Teller, which sets forth the facts at considerable length and which we hereby adopt. It is as follows:

The Committee on Patents, to whom was referred the bill (S. 949) for the relief of W. H. Ward, have had the same under consideration and beg leave to report:

That we find the facts bearing upon the use of Mr. Ward's invention by the Government of the United States and the character of the invention to be as set forth by Mr. Wadleigh in his report to the Forty-fourth Congress (Senate Report No. 422), as follows:

"Letters patent were granted to the said William H. Ward, of Auburn, N. Y., on the 10th day of November, A. D. 1857, for the term of fourteen years, for an 'improved bullet-making machine;' and on the 1st day of December, A. D. 1857, a patent was granted to the said Ward for a 'machine for molding shells,' for a like term of fourteen years, both of which inventions are 'original' or 'first patents' of their respective classes or kinds, and are known by the term of 'foundation patents,' which, as a rule, require a great deal of mental consideration to perfect them, as ideas that must be followed up with costly experiments, requiring both time and money, as is instanced in almost every new invention wherein capital and labor are taxed to their utmost in perfecting some new labor-saving device.

"These inventions of Mr. Ward seem to your committee to embrace all the essentials of perfection of their kind, and they have proved to be economical of material and a great saving of labor in the production of bullets from cold lead, and bomb shells from molten iron, respectively, as is shown in evidence, and from copies of the special reports, etc. From the copies of official reports it appears that Mr. Ward commenced shell experiments as early as 1841, with good results, and from that time forward he seems to have been more or less engaged until he had expended on his bullet-machine invention upward of forty-nine thousand dollars (\$49,700), and on the shell-molding-machine invention upward of twenty thousand dollars (\$20,712), making for the two, counting interest, the sum of \$70,000 up to the 10th day of February, 1874.

"And it further appears in evidence that these patented inventions and machines of Mr. Ward have been made use of by the Government from the time of their issue and all through the life-time of the said patents in the manufacture of leaden bullets and iron shell without any compensation to Mr. Ward.

* * * * *

"It further appears that during the years from 1860 to 1866, inclusive, the Government, from necessity, were obliged to build machines for the manufacture of bullets without reference to patents generally, and in doing so it appears that the Chief of Ordnance (at the time) was fully aware of Mr. Ward's patent, as set forth in the said testimony of Mr. Hood, when he, as Chief of Ordnance, gave authority for the construction of bullet-machines; and it further appears in evidence that he in no instance paid or caused to be paid to William H. Ward any consideration whatever, but referred him to Congress."

The later developments in Mr. Ward's efforts to secure recognition for his services were fully set forth in a report made from this committee by its then chairman, Mr. Platt, to the Forty-ninth Congress (Senate Report 568), as follows:

"That at the first session of the Forty-eighth Congress the Senate Committee on Patents referred to the Court of Claims, to be proceeded with under the Bowman act, so-called, the petition of William H. Ward, of Monongahela City, Pa., praying for relief and compensation for the use of certain patents named in the petition by the United States and reported their action to the Senate. (Senate Report No. 137.) The claim of Mr. Ward as set forth in said petition was for compensation for a shell-molding machine and for the infringement and use of his bullet-machine patents, namely, one of March 20, 1855, and the other of November 10, 1857, numbered, respectively, 12574 and 18616.

"It should be observed that the patent of March 20, 1855, is one which was originally issued to one William B. Hartley, which was assigned by said Hartley to said Ward on the 6th day of October, 1874. It was purchased by said Ward on account of claims made that it anticipated in one particular his patent of November 10, 1857, and, to avoid any question as to the liability of the Government for the use of said last-named patent, he purchased the patent issued to Hartley.

"The shell-molding machine is one made in pursuance of letters patent issued to him in December, 1857, for the Navy Department at Washington at the Washington navy-yard in the year 1858, for which it is claimed that full compensation has never been made.

"The Court of Claims, to whom the petition of said Ward was referred, in pursuance of the decisions and rulings of said court made after such reference, declines to consider the claims of said Ward for compensation for his shell-molding machine, and also any claim that may arise by virtue of the assignment of the patent from Hartley to said Ward.

"Some portions of the claims of said Ward are now something like twenty years old, but during all that period the claimant has been faithfully endeavoring to obtain relief at the hands of Congress, and it is not his fault or laches that he has not succeeded in obtaining an adjustment of his claim."

The bill as now before the Senate was favorably reported by this committee and passed by the Fiftieth Congress. Indeed, it has in some shape passed the Senate twice and the House of Representatives once, though never by both bodies during the same Congress. There is a mass of testimony showing the justice of the claim, and showing that the beneficiary of the bill rendered valuable aid, by means of his invention, to the country at a critical time in its history, and that he has never received compensation for the same.

We believe it only just that he should be allowed to establish his claim, and therefore recommend the passage of the bill.

Mr. Wadleigh, in the report referred to by Senator Teller, further said:

It is further manifest and known to your committee that William H. Ward made application for the extension of his patents aforesaid, and such extensions were passed through the House of Representatives by an almost unanimous vote during the first session of the Forty-third Congress, and in their regular order came to your committee, together with the petition for compensation for the use of same, and that your committee considering that the granting of the said extensions would again render the Government liable to William H. Ward, the said patentee, for such extended term of said patents, denied the granting of said extensions, with the understanding that the matter be referred to the Court of Claims for adjudication on the merits of the inventions, and claims arising therefrom; and, in accordance with such considerations, your committee recommend the accompanying bill, being Senate bill 419; and is with the papers with your committee.

Thus constituting an understood and implied agreements on the part of said Committee on Patents with the patentee, for and in consideration for the withholding of said extension acts.

On the 2d day of May, 1874, in debate on the shell-moulding machine extension act, Mr. Congressman Kellogg, of Connecticut, said:

I have followed the reading of this report and it seems to me this bill will fail to do justice to the patentee. I know it has been the practice—it was the practice during the war—for the Government to take patents for improvements in arms and war materials, and use them whenever it thought necessary, because of its strong arm to do so. That nobody would use this patent except the Government. The suggestion I wish to make is if the statements embraced in the report are correct, this man ought to present his claim to Congress for compensation for the use of his patent by the Government, or authority ought to be given to prosecute his claim against the Government in the Court of Claims.

Your committee find that Mr. Ward has prosecuted his claim with the utmost diligence; that he has presented it and pressed it upon the attention of every Congress for twenty years, and favorable action has been had by the committees of the House and Senate for the last nine Congresses, which action we think it unnecessary to set out at length.

We further find that where action has been taken by either the House or Senate that it has been favorable, and in furtherance of the agreement or understanding had between Mr. Ward and the Senate committee of the Forty-third Congress, Mr. Ward has kept his part of the agreement, and it is but justice that it should be carried out. No appropriation is made in the bill. The court is authorized to try his case, and do justice between the Government and its citizen. Other inventors whose patents were seized and used by the Government during the war have been authorized to sue, and Mr. Ward, who is now an old man and poor, should have the tardy justice done him of having at least an adjudication of his claim.

Your committee therefore recommend the passage of the bill.



JESSE C. NEWELL.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 4063.]

The Committee on War Claims, to whom was referred the bill (H. R. 4063) for the relief of Jesse C. Newell, submit the following report:

The claim is for \$75, the value of a horse which it is alleged died from the effects of disease in the United States service at Lebanon, Ky., on or about September 10, 1863.

Claimant filed his claim in the office of the Third Auditor of the Treasury under the provisions of the act of Congress approved March 3, 1849, and its amendments. The Third Auditor disallowed the claim for the reason that "there is no record evidence that claimant was properly in the military service of the United States at date of alleged loss of his horse."

The official records show that Jesse C. Newell was commissioned on the 1st day of September, 1863, first lieutenant of Company D, Thirteenth Regiment Kentucky Cavalry Volunteers, to serve one year, and that he was mustered out of service with his company July 10, 1865, at Camp Nelson, Ky.

The proof is conclusive that the claimant lost his horse while in the United States service, and your committee report back the bill and recommend its passage.

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1871-72

LEWIS R. HAMERSLY

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MCALEER, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 4084.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 4084) in relation to the appointment of Lewis R. Hamersly upon the retired list of the Navy, having had the same under consideration, respectfully submit the following report:

Lewis Randolph Hamersly was appointed an acting master's mate in the Navy on the 6th day of March, 1861, and this probably was the first appointment in the volunteer Navy. Mr. Hamersly was then attending school at Erie, but on receipt of his appointment reported for duty on the steamer *Michigan*. While attached to that vessel he contracted typhoid fever from which he was ill for three months. In February, 1862, he joined the *Aroostook* and served in that vessel until August, 1863. While attached to the *Aroostook* he participated in the engagement at Fort Darling, on the James River, and the battle of Malvern Hill, as the *Aroostook* was one of the two ships that coöperated with the army in that memorable battle. In August, 1862, the *Aroostook* joined the Potomac flotilla, and in November of that year sailed for the Western Gulf squadron, where she was engaged on blockade duty off Mobile. Mr. Hamersly left her in August, 1863.

In September, 1863, he reported for duty on the ironclad *Choctaw*, of the Mississippi squadron, the vessel then being stationed at the mouth of the Red River. While attached to the *Choctaw* he took part in the Red River expedition of 1864. In December, 1863, he was promoted to the grade of acting ensign. In August, 1864, he was detached from the *Choctaw* and ordered to the steamer *Fairplay*, on which vessel he participated in various engagements on the Cumberland and Tennessee rivers. He remained attached to the *Fairplay* until the end of the war, April, 1865. In September, 1865, he was ordered to the *Michigan*, where he served until March, 1866, when he was detached and ordered to the *Tallapoosa*, then on special service. In July, 1866, he was detached from the *Tallapoosa* and appointed second lieutenant in the Marine Corps; this appointment was given to Mr. Hamersly in recognition of his services in the volunteer navy. After serving two months at headquarters of the Marine Corps, at Washington, he was ordered to the Norfolk navy yard. In January, 1869, he was detached from Norfolk and ordered to the *Narragansett*, attached to the West Indies squadron.

In April, 1869, he was condemned by medical survey and invalided home. At this time he had served almost continuously for eight years, part of the time in an ironclad, and the entire time in hot climates.

Upon reporting at the naval hospital at Norfolk he was granted six months sick leave, and when that time had expired, being still unfit for duty, the sick leave was extended. At the time he received an intimation from Admiral Porter, then on duty at the Navy Department, that he would be ordered before a retiring board at the expiration of his second sick leave. This he did not desire, as he felt he was too young a man to be placed upon the retired list, and that while his health was too much shattered by the excitement and exposure incident to his active service to enable him to perform the duties of his office on the active list he could, without assistance from the Government, through retirement at that time, earn a living in civil life. He was a mere schoolboy in Erie, Pa., when the war broke out and not 20 years of age when it ended, and though his health had been shattered by eight years of active service at this young age, he was still a very young man with ambition and confidence. Hence he refused to go upon the retired list, and knowing that at the expiration of his second six months leave he would be ordered before a retiring board he, in September, 1869, resigned his commission as second lieutenant in the Marine Corps. The Department declined to accept his resignation, in a letter from Secretary Robeson, hereto annexed, and concurrently with this declination Mr. Hamersly received a message from Admiral Porter advising him against resigning when in a few months he would be retired; but Mr. Hamersly, acting upon the convictions and motives just stated, insisted upon the acceptance of his resignation, which action was then taken by the Department.

Mr. Hamersly's tastes and inclinations led him, after the acceptance of his resignation, to the compilation of certain books and works relating to the Navy, which have been of great value to the Department and Committees on Naval Affairs, and are held in high estimation by the officials and officers of the service, as will appear from the letters of Secretaries Robeson, Thompson, and Tracy, hereto appended. Two of Mr. Hamersly's works, *Records of Living Officers of the Navy* and *Hamersly's Naval Encyclopedia*, have been of great value to the Government, and in this connection it may be stated that while the Army has had four historians the Navy has had only one—Mr. Hamersly. In 1870 he compiled and published the first edition of his book entitled *Records of Living Officers of the Navy*, and this work has passed through four editions. In 1881 Mr. Hamersly published *Hamersly's Naval Encyclopedia*, and this work has been recognized as a standard authority both here and abroad. In 1879 he started the *United Service Magazine*, a military and naval magazine, of which he still remains the editor and proprietor.

He asks to be placed upon the retired list of the Marine Corps for the reason that, at his present age, it would be an honor gratifying both to himself and his children, and that the fact that twenty-two years ago he had declined to go on that list should weigh in his favor. His entire life since he left the Marine Corps has been devoted to matters intimately connected with the service.

Mr. Hamersly asks the rank of captain on retired list of Marine Corps, as had he been properly credited with the service performed in the volunteer Navy he would have been a captain before he resigned from the Corps. The act of July 3, 1867, says that officers who are or may be transferred from the volunteer Navy to the regular Navy or Marine Corps shall be credited with volunteer service precisely as if said service had been performed in the regular Navy or Marine Corps. All officers of the Marine Corps who entered in the early part of 1861 were made captains before 1869.

In 1867 a delegation of Marine officers who had been transferred from volunteer Navy called upon Secretary Welles to urge their claim for brevet rank and brevet promotion because of their services in the volunteer Navy. Mr. Welles replied to these gentlemen that the law did not give him power to confer brevets for services not performed in the Marine Corps, and he was kind enough to add that, if the law gave him such power, the first officer of that class he would brevet would be Lieut. Hamersly.

The present bill (H. R. 4084) gives Mr. Hamersly, after the lapse of twenty-two years, merely what he has voluntarily waived during that period, and without, of course, any pay during this long period extending from his resignation to an appointment upon the retired list, to which he was then entitled, and the appointment of Mr. Hamersly upon the retired list of the Navy having been recommended by the Secretary of the Navy, Rear Admiral S. P. Lee, and the Commandant of the Marine Corps, in letters hereto attached, your committee adopt the same as their report and recommend the passage of the act in question.

NAVY DEPARTMENT,
Washington, April 28, 1892.

SIR: The Department is in receipt of a communication from the Committee on Naval Affairs of the House of Representatives inclosing H. R. bill 4084, "To appoint Lewis R. Hamersly upon the retired list of the Navy, in the rank of captain in the U. S. Marine Corps, to which he would have been entitled by examination for promotion at the date of his resignation."

In its letter above referred to, the committee, referring to that portion of the inclosure marked A, indicated by further marks thereon, which paper accompanied the committee's letter, asks whether the law at the time Mr. Hamersly resigned his commission in the Marine corps, authorized his retirement as stated in said paper, and requests, further, the views of this Department as to the merits of the bill.

The letter of the committee, with the papers accompanying it, was referred to the Commandant of the U. S. Marine Corps for a report of the record of Mr. Hamersly in that corps and an expression of the views of the Commandant as to the merits of the bill. The committee's letter was returned to the Department by the Commandant of the Marine Corps, who, in response to instructions issued to him aforesaid, reported, under date of March 21, 1892, as follows:

"Respectfully returned to the Judge-Advocate-General, U. S. Navy, inclosing a record of the service of Lewis R. Hamersly, late second lieutenant, U. S. Marine Corps, which shows him to have served from July 24, 1866, to November 15, 1869, and prior to his entry in the Marine Corps he had served in the Navy during the whole of the late war, continuously from March, 1861, to the date of his appointment as second lieutenant in the Marine Corps, and rendered most excellent service.

"During Mr. Hamersly's service as a lieutenant in the Marine Corps he bore an excellent reputation and was an efficient officer. He has rendered the service actual benefit by the publication of several books since his resignation of his commission in the Marine Corps, which books are of value for reference, and he has always maintained his interest in the Navy and Marine Corps; and had he remained in the Marine Corps he would now have been a captain in that corps. As his restoration to the service on the retired list of the Marine Corps would not be prejudicial to the interests of any one in the corps, the bill is recommended for favorable consideration."

It appears from an examination of the records of this Department that Lewis R. Hamersly served as "acting master's mate" and "acting ensign" in the volunteer Navy of the United States from March 6, 1861, to July 23, 1866, when he was honorably discharged from the service.

Mr. Hamersly was appointed a second lieutenant in the Marine Corps after successfully passing an examination before a board of examining officers as to his physical and mental qualifications to perform the duties of a second lieutenant in the Marine Corps. He was commissioned a second lieutenant in said corps July 24, 1866, to take rank as such from the 23d day of that month, and he thereupon, in pursuance of orders issued to him from time to time, proceeded upon the discharge of his duties ashore and afloat as a second lieutenant of the Marine Corps until March 29, 1869, when he was transferred from the U. S. S. *Narragansett*, which vessel was then in the harbor of Havana, Cuba, to the naval hospital at Norfolk, Va., for treatment.

This transfer of Lieut. Hamersly to the naval hospital at Norfolk, Va., for treatment was in pursuance of the recommendation of a board of medical survey, held on board that vessel two days previous to such transfer, which recommendation of the board, as shown in the report of said medical survey, is as follows, viz:

- (1) Present condition: Unfit for duty.
- (2) Disease: Adynamia.
- (3) Probable duration: Indefinite.
- (4) Recommendation: That he be detached and sent to the naval hospital at Norfolk, Va.
- (5) Origin: Patient's present condition had its immediate origin in the line of duty. He was badly seasick during the nineteen days' passage of this ship from New York to Key West, which induced great prostration of his system that has continued to this time. At the time of joining this vessel he was not in robust health, and from his own statement appears predisposed to pulmonary and cardiac diseases.

A copy of the report of medical survey, held on board the *Narragansett* at Havana, Cuba, March 28, 1869, is inclosed for the further information of the committee.

On the 13th day of April, 1869, Lieut. Hamersly was granted sick leave for thirty days, and on the 10th day of May following the Department addressed a letter to him granting an extension of his leave of absence, as follows, viz:

"Leave of absence granted to you is hereby extended three months, and upon its expiration if the restoration of your health requires further leave upon applying to the Department your leave will be extended."

On the 4th of the following August Lieut. Hamersly's leave of absence was further extended as follows:

"In consequence of your continued indisposition your leave of absence is extended three months, agreeably with your request of the 2d instant."

In a letter dated September 13, 1869, addressed to the Secretary of the Navy, Lieut. Hamersly tendered his resignation, to take effect upon the expiration of his leave of absence, November 15 of that year, and in reply thereto he was informed by the Department that his resignation would not at that time be accepted, but that the same would receive further consideration. Lieut. Hamersly's resignation was on November 15, 1869, accepted by the Department, in accordance with his request, to take effect on the date last mentioned.

With reference to the request of the committee for an expression of the views of this Department on the merits of the bill under consideration, I have the honor to state that, in view of the fact that the information contained in the inclosures of this communication show an enviable record of active service on the part of this gentleman during the late war in the volunteer Navy, a commendable record subsequent thereto as a commissioned officer in the Marine Corps, until he was stricken down in the line of duty on board the ship to which he was attached, in a foreign port, condemned by a duly organized board of survey consisting of medical officers of the Navy, and transferred to the naval hospital at Norfolk, Va., for treatment for the disease with which he was suffering, and which he contracted in the line of duty, as before stated, it would seem to be unnecessary for an expression by this Department of its views as to the merits of the bill further than to suggest that had Mr. Hamersly been retired at a time when he could have been retired justly and lawfully under the existing law, he would have been placed upon the retired list of the Marine Corps, with the rank of second-lieutenant, which rank he then held.

The inclosure of the committee's letter, marked A, is herewith returned.

In view of the errors made in formulating this bill for the object for which it was proposed, which will be clearly apparent upon reference to the same, I deem it proper to inclose for the consideration of the committee a form of bill which is suggested as a substitute for the one which accompanied the committee's letter.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Hon. H. A. HERBERT.

Chairman Committee on Naval Affairs, House of Representatives.

NAVY DEPARTMENT,
Washington, May 16, 1878.

DEAR SIR: I have to thank you for your "Records of Living Officers of the U. S. Navy," which reached me this morning.

Having heretofore had the opportunity of looking over it, I am enabled to say that I regard it as a most valuable work. You have rendered an important service to the Navy, one which I think all officers will thank you for.

Very respectfully and truly,

R. W. THOMPSON,
Secretary of the Navy.

LEWIS R. HAMERSLY, Esq.

NAVY DEPARTMENT, *January 11, 1870.*

DEAR SIR: I have examined the proof sheets of your work on the "Records of the Living Officers of the Navy," and am of the opinion that it will supply a want and be a useful book to the service and to the country.

Very respectfully, your obedient servant,

GEORGE M. ROBESON,
Secretary of the Navy.

LEWIS R. HAMERSLY, Esq.,
Editor of the "Records of Living Officers."

NAVY DEPARTMENT,
Washington, June 26, 1890.

DEAR SIR: I have to thank you for a copy of your "Records of Living Officers of the U. S. Navy," and take pleasure in adding my recommendation of the work to those of my predecessors.

Very truly yours,

B. F. TRACY,
Secretary of the Navy.

LEWIS R. HAMERSLY, Esq.

O

MARY P. MULLIN.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 5821.]

The Committee on War Claims to whom was referred the bill (H. R. 5821) for the relief of Mary P. Mullin, submit the following report:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fifty-first Congress, hereto annexed as a part of this report.

Your committee adopt the said report as its own and recommend the passage of the bill.

[House Report No. 2160, Fifty-first Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 3075) for the relief of Mary P. Mullin, report as follows:

This bill covers a claim made for the value of the contents of a dwelling house occupied by Mary P. Mullin, late of Paducah, Ky., and destroyed by Union forces acting under the orders of Col. S. G. Hicks, of the Fortieth Regiment of Illinois Volunteers, on the 26th of March, 1864. Claim stated at \$1,176.75.

Mrs. Mullin was without doubt a decided and active loyal citizen, and her husband rendered valuable services to the Union Army as a private of Company E, Thirteenth Regiment Illinois Infantry Volunteers. He was wounded in action at Chickasaw Bayou, on the Yazoo River, December 29, 1862; after recovering from the wound he was made "acting hospital steward" at Stearn's hospital, at Paducah, Ky., and was so acting on the 26th day of March, 1864, when the town was attacked by General Forrest and he taken prisoner.

The value of the property destroyed is proven to have been worth \$1,176.75, and your committee report back the bill and recommend its passage.



THE UNIVERSITY OF CHICAGO
LIBRARY

1917

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W. H. COLLARDS ET AL.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 2841.]

The Committee on War Claims, to whom was referred the bill (H. R. 2841) for the relief of W. H. Collards, John A. Elsaser, Peter Johnson, and others, submit the following report:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fifty-first Congress, which report is hereto annexed as a part of this report.

Your committee adopt said report as their own, and recommend the passage of the bill.

[House Report No. 269, Fifty-first Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 3069) for the relief of W. H. Collards, John A. Elsaser, Peter Johnson, George Shade, M. G. Brown, Jonas F. Reitz, and L. H. Boyd, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto annexed for information.

Your committee adopt the said report as their own, and recommend that the bill do pass.

[House Report No. 3342, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 7534) for the relief of W. H. Collards, John A. Elsaser, Peter Johnson, George Shade, M. G. Brown, Jonas F. Reitz, and L. H. Boyd, having had the same under consideration, respectfully report as follows:

These claims originated as follows: On the 12th day of March, 1887, certain soldiers of the U. S. Army stationed at Fort Hays, in the State of Kansas, while burning off the rubbish from the fort garden, by the order of the commanding officer, negligently permitted the fire kindled by them to escape beyond their control, and said fire spread and extended until it reached the farms and houses of these claimants, and entering upon said farms consumed property to the amount and value mentioned in the bill.

There is no doubt as to the origin of the fire or as to the value or ownership of the property destroyed. This claim is made on the ground that the loss was caused by the negligence of this officer and the soldiers under his command while performing duties devolving upon them in line of duty and in the service of the Government.

The question is, should the Government of the United States be held liable or responsible for damages occurring in this manner? To state the case as it is, these losses were caused by the negligence of the agents or employés of the Government while they were in charge of the fort and in the performance of a duty devolving upon them in the service of the Government. The losses and damages sustained by these claimants were not caused by any fault or negligence of the claimants, but are attributable to the gross negligence of these agents of the Government.

These claimants, under the conceded facts in these cases, would be entitled to recover if the contest were between them and a private citizen or a corporation. Is

this right affected by the fact that the wrong-doer is the Government? In other words, is the Government liable for such damages, or would it be liable under the circumstances if it could be sued in the courts? Your committee would have much difficulty in assenting to this proposition of the liability of the Government if it were a new one. It would seem to be a dangerous proposition to affirm that the Government of the United States should be made liable for losses occasioned by the negligent and tortuous acts of its agents and employés; but your committee find that many acts have been passed by Congress to pay such losses. A collection of many special acts of Congress recognizing the duty of the Government to re-imburse its citizens for losses occasioned by the negligence or misconduct of the officers and agents of the United States may be found in the report of the Committee on Claims at this session of Congress in the case of the owners of the steamer *I. N. Bunton* (H. R. 7211), and that report, together with the findings and decision of the Court of Claims (Congressional case No. 68), and the adoption of that report by the House by the passage of the bill has, in the opinion of your committee, established a precedent which your committee feel bound to respect. Your committee quote from the report above cited as follows:

"A large number of special acts have been passed recognizing the duty of the Government to reimburse private citizens for losses sustained by collisions on the high seas or inland waters, when the Government vessel was at fault and when no negligence could be imputed to the claimants. We here give a summary of these, which, however, is in all probability not a complete one:

"(1) An act for the relief of T. H. Holderness, owner of the British ship *Duke of Edinburgh*, approved January 27, 1873 (17 Stat. L., p. 717). This act appropriated to reimburse the owner of that vessel for injuries received by collision with the United States steamer *General McPherson*.

"(2) A resolution referring to the Court of Claims claims against the United States for the loss of the schooner *William Carlton*, approved March 3, 1871 (16 Stat. L., p. 705). This act referred to that court the claim of the owners of said schooner, her cargo, etc., for loss by collision with the United States ram *Stonewall*, on November 23, 1865. That court rendered judgment in favor of the claimants against the Government for \$28,026.85. (10 Court of Claims Reports, p. 485.)

"(3) An act referring the claim of the owners of the schooner *Ada A. Andrews* to the Court of Claims, approved June 20, 1874 (18 Stat. L., p. 201). Judgment against the United States was rendered by the Court of Claims for \$28,809.35. (12 Court of Claims Reports, p. 480.)

"(4) An act referring the claim of the owners of the schooner *Flight* to the Court of Claims, approved January 12, 1877 (19 Stat. L., p. 503). The claimants recovered \$3,875. (14 Court of Claims Reports, p. 425.)

"(5) An act granting jurisdiction and authority to the Court of Claims in the case of the schooner *Dom Pedro*, approved March 3, 1879 (20 Stat. L., p. 483). Judgment for claimants for \$7,799.60. (19 Court of Claims Reports, p. 684.)

"(6) An act for the relief of George R. Dennis, of Maryland, approved June 10, 1878 (20 Stat. L., p. 540). This act directed the Secretary of the Treasury to pay to George R. Dennis \$2,393.66 for damages sustained by him by the Government steamer *General Meigs* running into his schooner *William J. Dennis*.

"(7) The sundry civil appropriation act of August 7, 1882 (22 Stat. L., p. 324), appropriated for two cases of similar character, one of them being "to pay to Isaac A. Sylvester, for the losses and damages sustained by him on account of the collision of the United States sloop of war *Lancaster* with the drill-platform and sloop *Derry* at Gangway Rock, Portsmouth, N. H., \$2,000, in full satisfaction thereof."

"(8) The sundry civil appropriation act of 1883 appropriated \$19,957 to re-imburse the Potomac Steamboat Company for a collision in Hampton Roads with a United States naval tug.

"(9) Three similar claims, aggregating \$14,237.92, were appropriated for in the sundry civil appropriation act approved March 3, 1885. (23 Stat. L., p. 496)."

The existence of a right as against the Government in cases of tort is fully recognized by that distinguished jurist Judge Cooley, who, in his work on torts, says (page 122):

"Even the State or general Government may be guilty of individual wrongs, for while each is a sovereign it is a corporation also, and as such is capable of doing wrongful acts. *The difficulty here is with the remedy, not with the right.* No sovereignty is subject to suits, except with its own consent. But either this consent is given by general law, or some tribunal is established with power to hear all just claims; or if neither of these is done, the tort remains, and it is always to be presumed that the legislative authority will make the proper provision for redress when its attention is directed to the injury."

In view of this authority and these acts of Congress, sustained as they are by the passage of said bill (H. R. 7211) by this House, your committee are constrained in this case to recommend the passage of this bill.

EIGHTH REPORT OF U. S. CIVIL SERVICE COMMISSION.

MAY 10, 1892.—Ordered to be printed.

Mr. RICHARDSON, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered the Senate concurrent resolution to print 23,000 copies of the eighth report of the United States Civil Service Commission, of which 1,000 copies shall be for the use of the Senate and 2,000 copies for the use of the House and 20,000 copies for the use of the Commission, and report the same with the recommendation that it do pass.

The estimated cost of the same is about \$2,700.

The committee recommend that the House resolution on the same subject do lie on the table.



ELEVENTH AND TWELFTH ANNUAL REPORTS OF BUREAU.
OF ETHNOLOGY.

MAY 10, 1892.—Ordered to be printed.

Mr. RICHARDSON, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered the Senate concurrent resolution to print 8,000 copies each of the Eleventh and Twelfth Annual Reports of the Director of the Bureau of Ethnology, with accompanying papers and illustrations, and uniform with the preceding volumes of the series, and report the same with the recommendation that it do pass.

The estimated cost of the same is about \$13,000 each.

The committee recommend that the House concurrent resolution on the same subject do lie on the table.

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EIGHTH AND NINTH ANNUAL REPORTS OF BUREAU OF
ANIMAL INDUSTRY.

MAY 10, 1892.—Ordered to be printed.

Mr. RICHARDSON, from the Committee on Printing, submitted the
following

REPORT:

The Committee on Printing have considered Senate concurrent resolution to print 50,000 copies of the Eighth and Ninth Annual Reports of the Bureau of Animal Industry for the years 1891 and 1892, and report the same to the House with the recommendation that it do pass.

The estimated cost of the same is \$35,000.



LIST OF DOCUMENTS.

MAY 10, 1892.—Ordered to be printed.

Mr. RICHARDSON, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered the Senate concurrent resolution to print 2,000 copies of List of Congressional Documents, prepared by the superintendent of documents, Department of the Interior, and report the same to the House with the recommendation that it do pass.

The estimated cost of the same is \$95.

The committee recommend that House concurrent resolution on the same subject do lie on the table.



PROCEEDINGS OF THE INTERNATIONAL GEOLOGICAL
CONGRESS.

MAY 10, 1892.—Ordered to be printed.

Mr. RICHARDSON, from the Committee on Printing, submitted the
following

REPORT:

The Committee on Printing have considered the House concurrent resolution to print 3,000 copies of the proceedings and transactions of the International Geological Congress held in Washington, D. C., from August 26 to September 2, 1891, and report same to the House with the recommendation that it do pass.

The estimated cost of same is \$6,587.



REPORT OF SUPERINTENDENT OF COAST AND GEODETIC
SURVEY.

MAY 10, 1892.—Ordered to be printed.

Mr. MCKAIG, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered the Senate concurrent resolution to print and bind in cloth the report of the Superintendent of the Coast and Geodetic Survey for the fiscal year 1891, 1,500 copies of part 1 in quarto form, of which 200 copies shall be for the use of the Senate, 600 copies for the use of the House, and 700 copies for distribution by said Superintendent; and of part 2 in octavo form 2,800 copies, of which 200 copies shall be for the use of the Senate, 600 for the use of the House, and 2,000 copies for distribution by said Superintendent, report the same with the recommendation that it do pass.

The estimated cost of the same is about \$8,630.

They recommend that the House bill on the same subject do lie on the table.



MONUMENT AT YORKTOWN, VA.

MAY 10, 1892.—Ordered to be printed.

Mr. McKAIG, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered the House resolution to print 5,000 copies of the proceedings attendant upon the formal presentation of the monument at Yorktown, Va., and report as a substitute therefor a concurrent resolution which is herewith submitted.

The estimated cost of the same is \$4,765.

The committee recommend that the House resolution do lie on the table.



REPORT OF THE COMMISSIONER OF FISH AND FISHERIES.

MAY 10, 1892.—Ordered to be printed.

Mr. MCKAIG, from the Committee on Printing, submitted the following

R E P O R T :

The Committee on Printing have considered the Senate concurrent resolution to print the report of the Commissioner of Fish and Fisheries, covering the operations of the Commission for the fiscal years 1889-'90 and 1890-'91, and report the same with the recommendation that it do pass.

The estimated cost of the same is \$6,960 for each year.



REPORT OF NATIONAL ACADEMY OF SCIENCES FOR 1891.

MAY 10, 1892.—Ordered to be printed.

Mr. BRODERICK, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered the Senate concurrent resolution to print, in addition to the usual number, extra copies of the Report of the National Academy of Sciences for 1891, and also the memoirs which accompany the report of 1889, and report the same with the recommendation that it do pass.

The estimated cost of the same is \$2,872.

○

REPORT OF BOARD OF ORDNANCE AND FORTIFICATIONS.

MAY 10, 1892.—Ordered to be printed.

Mr. BRODERICK, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered House concurrent resolution to print 500 extra copies of the report of the Board of Ordnance and Fortifications, for the use of the War Department, and report the same to the House with the recommendation that it do pass.

The estimated cost of the same is \$75.

○

REPORT ON EUROPEAN IMMIGRATION.

MAY 10, 1892.—Ordered to be printed.

Mr. RICHARDSON, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered Senate concurrent resolution to print and bind 6,000 copies of the reports on European immigration made to the Secretary of the Treasury by the special commissioners appointed under authority of the sundry civil appropriation act of March 3, 1891, and report the same to the House with the recommendation that it do pass.

The estimated cost of the same is \$1,205.

○

REPORT OF SANITARY ENGINEERS.

MAY 10, 1892.—Ordered to be printed.

Mr. RICHARDSON, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing have considered the Senate concurrent resolution to print 700 additional copies of the report of the board of sanitary engineers of the District of Columbia upon the sewerage of the District, and report the same with the recommendation that it do pass.

The estimated cost of the same is \$340.

The committee recommend that the House resolution on the same subject, and of similar import, lie on the table.



ABIGAIL L. FINNEY.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CURTIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany S. 1356.]

The Committee on Invalid Pensions have considered the bill (S. 1356) granting a pension to Abigail L. Finney, which passed the Senate May 4, 1892, and submit the following report:

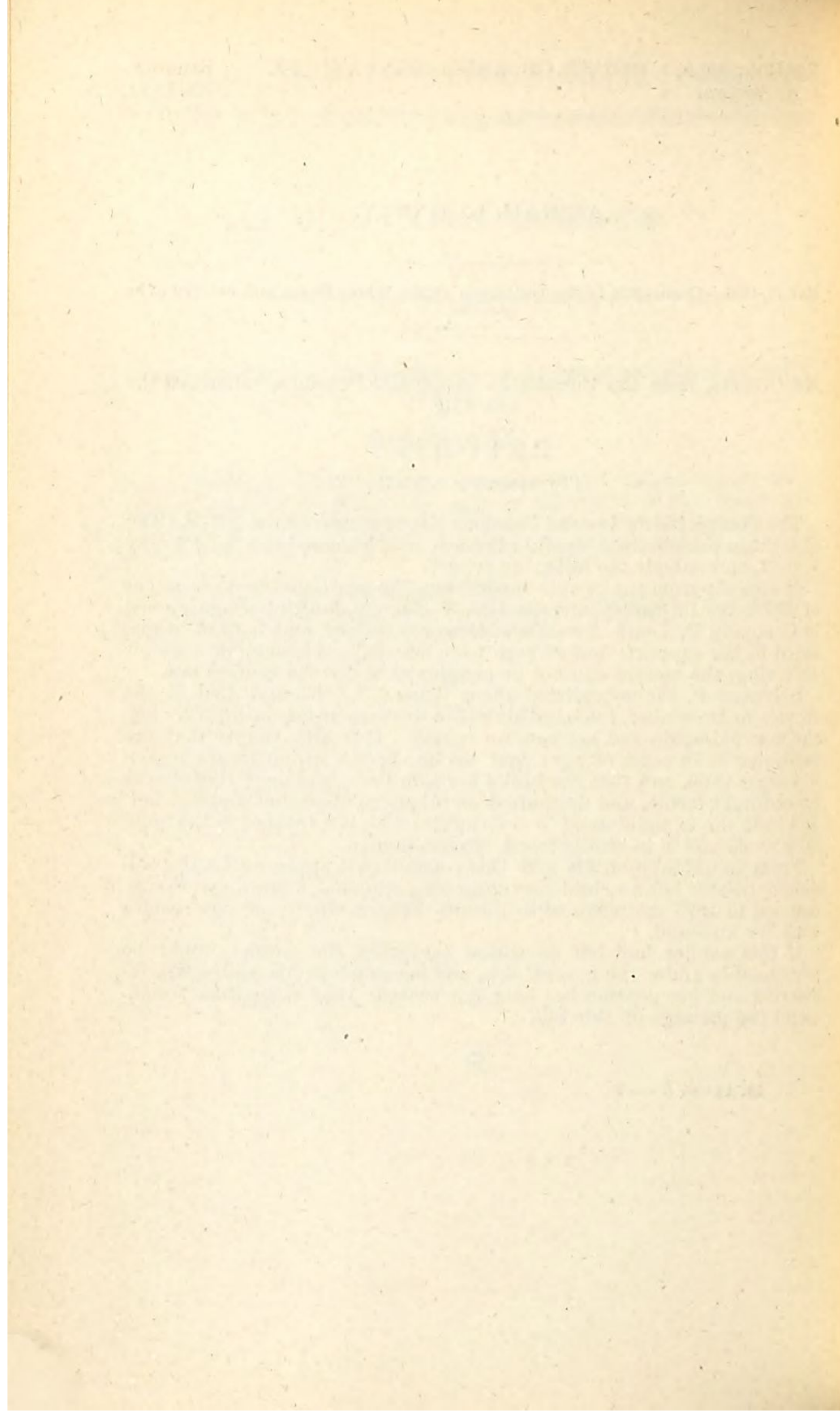
It appears from the Senate report that the petitioner is the mother of Sylvester P. Finney and George W. Finney, both of whom served in Company E, Tenth New York Heavy Artillery, and both of whom aided in her support; but as both were married, and each left a widow surviving, the mother can not be pensioned under the general law.

Sylvester P. Finney enlisted about August 5, 1862, and died in the service in December, 1863, and his widow drew a pension until 1873, when she married again and her pension ceased. It is also shown that the petitioner is 78 years of age; that she has been a cripple from a broken hip since 1866, and that she broke her arm two years ago; that she is exceedingly feeble, and dependent on others to dress and undress her, and that she is maintained by a daughter who is a teacher in the public schools and is in straightened circumstances.

From an affidavit on file with this committee it appears that the soldier Sylvester left no child surviving him, and that when his widow remarried in 1873 she removed to Nantes, France, where she now resides with her husband.

If this soldier had left no widow surviving, the mother would be pensionable under the general law, and inasmuch as his widow has remarried and her pension has long ago ceased, your committee recommend the passage of this bill.

○



REGULATING THE FISHERIES.

MAY 10, 1892.—Laid on the table and ordered to be printed.

Mr. BUCHANAN, of Virginia, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT:

[To accompany H. R. 7553.]

The Committee on Merchant Marine and Fisheries, to which was referred the bill (H. R. 7553) to regulate the fisheries, and for other purposes, has carefully considered the same and submits the following report:

The chief purpose of the bill is to authorize any citizen of the United States to take menhaden and mackerel fish with purse seines in all navigable waters within the jurisdiction and control of the United States, so far as the United States have power to regulate the rights of fisheries therein, where the tide ebbs and flows, subject only to such regulations as Congress may prescribe from time to time, any law, custom, or usage of any State to the contrary notwithstanding; and to amend the license laws of the United States so that a license may be obtained by any such citizen for carrying on such fisheries.

The bill only authorizes citizens of the United States to take such fish in the navigable waters within the jurisdiction of the United States, so far as Congress has the power to regulate such fisheries, and leaves the question as to whether it has any power, or the extent of its power, on the subject wholly undefined. Such vague and indefinite legislation is unusual, and your committee thinks unwise. It is of the opinion that before Congress should pass any law it should be satisfied not only that it has an undoubted constitutional right to pass it, but the subject-matter upon which it is to operate, and the rights conferred thereby, should be clearly defined and easily understood, and not left to conjecture. Otherwise those affected by such legislation may not be able to ascertain what their rights are until after long-continued and costly litigation, and in the meantime rights may be disregarded, wrongs and injuries done, crimes committed, and blood shed. Such evils would almost certainly follow if the bill before your committee becomes a law.

If Congress has the power claimed by the friends of the bill, it will deprive great States of rights which they have exercised since their separation from Great Britain, and which have never before been questioned by the United States; it will strip the citizens of such States of valuable property rights and privileges, and may authorize citizens of other States to set at defiance their laws. The States of Maine, Massachusetts, Maryland, Virginia, and perhaps others, through their governors, attorney-general, or other representatives are op-

posing the passage of this bill. Those States and their people, and others interested alike with them, are not likely to surrender such ancient and valuable rights and privileges as this bill may take from them without exercising all legitimate means to prevent it; without resisting all trespasses upon their territory and all violations of their laws.

If your committee believed that Congress had the power to legislate upon this subject it could not report the bill favorably in its present shape for the reasons given above; but if these were the only objections to the bill they could be remedied. But has Congress the power under the Constitution to control such fisheries?

If it has, the bill works a complete revolution in the control of such State fisheries; it not only transfers absolutely their control from the hands of the great Atlantic coast States, in which it has continued unquestioned ever since the Revolution, but it asserts a power in Congress which would enable it to control absolutely, and in utter disregard of State laws, all the State fisheries within the navigable waters of the United States, whether on the seacoast and bays, where the tide ebbs and flows, or in the fresh waters of the rivers and lakes, for Congress has no more power to regulate menhaden and mackerel fisheries than other fisheries in navigable waters within the territorial jurisdiction of the States.

Before Congress, a legislative body with enumerated and limited powers only, should pass any law, and especially one which overthrows conditions which have existed for more than one hundred years, and deprives the several States of property rights and privileges of great value never before claimed by the United States, there should be some clear warrant for it found in the Constitution.

When the Revolution took place and the independence of the colonies was established, each one of them became an independent sovereignty, and in that character held the absolute and unquestioned right to its navigable waters and the soils under them for the common use of its own people. The controlling power over the seacoasts, its shores and tide waters, was entirely renounced by Great Britain and was vested in the several States, respectively. This power thus vested in the several States was the same as that which was and is exercised by the Crown of England. (*New Orleans vs. United States*, 10 Peters, 662; *Martin vs. Waddell*, 16 Peters, 410; *Pollard vs. Hogan*, 3 How., 212; *Harden vs. Jordan*, 140 U. S. Rep., 382, and cases cited.)

These authorities, and many others, both State and Federal, show fully and beyond controversy that the several States had absolute control over the fisheries within their respective territorial limits, and if these States had remained independent nations the boundaries of each would unquestionably be recognized, and the right of each to control the fisheries within its territorial limits and jurisdiction would be conceded by all other nations. That right to control the fisheries not only extended to the rivers and lakes, but to the seacoasts and bays, and the arms of the sea within the boundaries of each State; and such right of control over its seacoasts has never been placed at less than 3 geographical miles, or a marine league from the coast over the open sea. (Proceedings of the Halifax Commissioner of 1877, Executive Document 89, Forty-fifth Congress, second session House reports, p. 120, 121, and 166; *Manchester vs. Mass.*, 139 U. S. Rep., 257; Wheaton's International Law, Sec. 190.)

This jurisdiction and right of control over its fisheries are still in each State for the benefit and use of its own people, unless granted to the

United States by the Constitution, for the powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States, respectively, or to the people.

There is no express grant of the title to the navigable waters within the States, nor any express control of their fisheries given to the United States in the Constitution. If such grant or control exist at all, it exists only by inference or implication.

That the title to such property did not pass under the Constitution to the United States is well settled by the Supreme Court in a long line of cases. The court, Chief Justice Marshall delivering the opinion, held in *Martin vs. Waddell* (16 Peters 410) that:

When the Revolution took place the people of each State became themselves sovereign, and in that character *hold the absolute right to their navigable waters, and the soils under them*, for their own common use, subject only to the rights since surrendered by the Constitution.

In *Pollard's Lessee vs. Hogan* (3 How., 212) the question arose as to the power of the United States to grant lands under tide water in Mobile Bay within the territorial limits of the State of Alabama, and the same court held that the shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States, respectively.

In *Smith vs. Maryland* (18 How., U. S. Rep., 71 and 74) the question arose under a statute of that State passed to protect her oyster fisheries in the Chesapeake Bay, and the court decided, Mr. Justice Curtis delivering the opinion, that—

Whatever soil under low-water mark is the subject of exclusive property and ownership belongs to the State on whose maritime border and within whose territory it lies, and the State holds the propriety of the soil for the conservation of the public interests of fishery therein, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. In other words, it may forbid all such acts as would render the public right less valuable, or destroy it altogether. This power results from the *ownership of the soil*, from the *legislative jurisdiction of the State* over it, and from its duty to preserve unimpaired those public uses for which the soil is held.

If the title to such territory was not granted to the United States from what provisions in the Constitution can it be inferred or implied that the right to control the fisheries was granted?

The advocates and friends of the bill argue that such implied power may be found in that provision of the Constitution which gives the United States maritime and admiralty jurisdiction over the navigable waters within its limits; or that which gives it the right to regulate commerce with foreign nations and among the several States; or that which guaranties that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

It was held by Mr. Justice Washington, in *Corfield vs. Coryell*, at an early day (1823) that the power to regulate the fisheries belonging to the several States, and to punish those who should transgress these regulations, was exclusively vested in the States, respectively, at the time when the present Constitution was adopted, and that it was not surrendered to the United States by granting it admiralty and maritime jurisdiction. To the same effect are the decisions in *United States vs. Bevan* (3 Wheat., 336); *United States vs. Guest* (5 Mason, 290); *Smith vs. Maryland* (18 How., 71); *Manchester vs. Massachusetts* (139 U. S.).

The privileges and immunities guarantied by the Constitution to the citizens of each State of the Union confer no right upon such citizens to claim, nor power in the United States to grant, any interest in the property held by another State for the common benefit of its own citi-

zens. The right which the people of any State have in common property within its territorial limits does not come from their citizenship alone, but from citizenship and property combined. Such a right is in fact a property right and not a mere privilege or immunity of citizenship. Fisheries are a part of the common property of the State in whose waters they are; a part of her wealth whether floating or fixed. She has the right to regulate and control such property as much as any other property within her borders, provided in exercising this control she does not interfere with the rights of navigation and commerce in her navigable waters. (*McCready vs. Virginia*, 94 U. S. Rep., 391.) Chancellor Kent, Vol. 1, p. 439, says:

It is admitted, however, that the grant to Congress to regulate commerce on the navigable waters of the several States contains no cession of territory or of public or private property; and that the States may by law regulate the use of fisheries and oyster beds within their territorial limits, though upon navigable waters, provided the free use of the waters for purposes of navigation and commercial intercourse be not interrupted.

Judge Washington held in *Corfield vs. Coryell* that the grant to Congress to regulate commerce in the navigable waters *belonging to the several States* renders such waters the public property of the United States for the purposes of navigation and commerce. But this grant contains no cession, expressed or implied, of the *territory of the States* or of its *public or private property*. This *jus privatum*, which the State has in the soil covered by its waters, is altogether distinct from the *jus publicum* with which it is also clothed. The former, *such as fisheries of all descriptions, remain common to all the citizens of the State to which it belongs*, to be used by them according to their necessities or the laws which regulate their use.

The *jus publicum* consists in the right of all persons to use the navigable waters of the State for commerce and navigation, trade and intercourse, subject by the Constitution to the exclusive regulation of Congress.

In *McCready vs. Virginia* (94 U. S., 391) the court held, Chief-Justice Waite delivering the opinion of the court, that it had long been settled in that court that *each State owns* the beds of all tide waters within its jurisdiction, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people and the ownership is that of the people of the State in their sovereignty. The title thus held is subject to the paramount right of navigation, the regulation of which in respect to foreign and interstate commerce has been granted to the United States. *There has been, however, no such grant over the fisheries*. These remain under the exclusive control of the State, which has consequently the right, in its discretion, to *appropriate its tide waters* and their beds to be used by its people as a common for taking and cultivating fish, so that it may be done without obstructing navigation. Such an appropriation is in effect, nothing more than a regulation of the use by the people of *their common property*. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is in fact a property right, and not a mere privilege or immunity of citizenship.

Nor do we think, continues the Chief Justice, that this case is at all affected by the clause of the Constitution, which confers power on Congress to regulate commerce. There is here no question of transportation or exchange of commodities, but only of cultivation and production. Commerce has nothing to do with land while producing, but only with the product after it has become the subject of trade. Virginia, owning

land under water adapted to the propagation and improvement of oysters, has seen fit to grant the exclusive use of it for that purpose to the citizens of the State. In this way Virginia may be enabled to produce what the people of the other States can not; but that is because she owns property which the others do not. Their productions do not spring from commerce, but commerce, to some extent, from them.

In *Hardin vs. Jordon* (140 U. S. Rep., 381, 382) the same court held that the title to such lands being in the State, the lands are subject to State regulation and control, under conditions, however, of not interfering with the regulations which may be made by Congress with regard to public navigation and commerce. The State may even dispose of the usufruct of such lands, as is frequently done by *leasing oyster beds* in them and *granting fisheries* in particular localities, also by the reclamation of submerged flats and the erection of wharves and piers and other advantageous aids of commerce. Sometimes large areas, so reclaimed, are occupied by cities and are put to the public and private uses, *State control and ownership therein being supreme*, subject only to the paramount authority of Congress in making regulations of commerce, and in subjecting the lands to the necessities and uses of commerce.

The control of fisheries is not a regulation of commerce. Fish when caught, as all other movable property, may become articles of commerce, but the catching of fish is no more commerce than the raising of corn or cattle. The State in whose territorial jurisdiction fish are caught has as absolute control over them as it has over corn raised on its soil, and has the same right to tax one as the other.

It is well settled that the owner of land has a right of property in wild animals or game killed upon his land by a stranger.

The fact that the game was *feræ naturæ* does not vest title to such game in a stranger (although he has hunted and killed it) as against the owner upon whose land it was killed. (*Riggs vs. Earl of Lonsdale*, 1 Hurlst. & Normen, 923; *Blades vs. Higgs*, 104; E. C. L. R., 501, 106; *Ibid.*, 844, 866.)

That the same doctrine is true of fish caught and taken from the waters of the rivers, whether that owner be a private individual or a State, can not be doubted; and in the discussion of the question, in some of the cases, fish are mentioned as being of the same character as wild animals and birds.

Your committee is of opinion that the right to control such fisheries belongs exclusively to the State in whose territorial limits or jurisdiction they are;

That the territorial limits or jurisdiction of such State extends over tide waters a marine league from its coast; that bays wholly within its territory, not exceeding two marine leagues in width at the mouth, are within this limit, and that included in this territorial jurisdiction is the right of control over fisheries, whether the fish be migratory like menhaden, or free swimming fish like shad, or free moving fish like lobsters, or fish attached to or imbedded in the soil like oysters, subject to the paramount right of navigation and commerce;

That there are no tide waters and no belt of land under the sea adjacent to the coast which is the property of the United States and not the property of the State;

That Congress therefore has no power to regulate or control the fisheries in the navigable waters within the territorial limits or jurisdiction of any State.

Your committee is strengthened in this view by the fact that a bill involving a similar question was referred to the Judiciary Committee of this House in the Forty-ninth Congress, and the conclusion reached that Congress had no power to legislate upon the subject. (See Report made by Mr. Tucker, of Virginia, No. 2385, first session Forty-ninth Congress.)

Your committee therefore reports the bill adversely and recommends that it do lie upon the table.

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REGULATION OF THE FISHERIES.

FEBRUARY 28, 1893.—Ordered to be printed.

Mr. FITHIAN, from the Committee on Merchant Marine and Fisheries,
submitted the following as the

VIEWS OF THE MINORITY:

[To accompany H. R. 7553.]

It is important at the outset to ascertain exactly, or as near as possible, the object and effect of the bill under consideration. The committee has given numerous hearings to those interested in the bill pro and con, and the subject has been thoroughly canvassed and discussed. A great deal has been said, however, that is both irrelevant and misleading. The bill, as will be observed by a perusal of it, permits the taking of menhaden and mackerel by citizens of the United States in all waters within the jurisdiction and control of the United States, so far as Congress has power to regulate rights of fisheries therein.

It will readily be seen that there are three questions involved in this bill.

First. What are the fisheries of the United States?

Second. What jurisdiction and control has Congress concerning them?

Third. Should Congress exercise the power?

To thoroughly understand the scope and nature of this subject it will not be amiss to go into the history of the fisheries, their relation to the commerce and navigation of the country, and thereby show what is contemplated by the enactment of such legislation, especially in view of the fact that no careful consideration has been given to the subject for many years.

Before doing this, however, it seems necessary to state that the question has been confined by those who are opposed to this bill within limits entirely at variance with all the facts of history.

The rights of fishing have been, almost from the beginning of the history of the people to which we belong, so broadly exercised that in our time it seems preposterous that it should be sought to confine the advantages of the seas to any particular number of those living upon the shores immediately adjacent. And especially is this the case when it is considered that in the great charter of Anglo-Saxon liberty—Magna Charta—fishing was made free, and from that time until recently every Briton in America, “the land of the free,” no matter whether Englishman, American, or Australian, under whatever sun, by whatever water he has been found, has had as his inalienable birthright the liberty, unfettered, of taking fish anywhere and everywhere and at all times from waters under the jurisdiction of Great Britain.

I refer to America in this connection because, prior to the Revolution, we were subjects of Great Britain and part of British dominions, and

as such had the right which has been described. In other words, as will be shown by authorities later on, all the subjects of the King of England, whether residing in England, Virginia, Georgia, Massachusetts, or Newfoundland, had the right to take fish in all the waters of the North Atlantic Ocean and tributaries, untrammelled and unhindered. It was a right the existence and exercise of which was a part of the *jus publicum* attaching to the colonists as subjects of the Crown and could never be abridged or limited.

It was not confined by any limitation of distance from the shore or time of exercise. The effect of the Declaration of Independence upon the common right will be discussed hereafter. It is only necessary to remark that the colonies carried on the war of the Revolution together, that is, jointly, so that no divisions or differences can be said to exist in their relations to each other in advantages obtained by that conflict, or in rights in common enjoyed prior thereto. What were these common rights that had withstood the attacks of Parliament itself, and what their scope?

There can be no stronger nor more forcible answer given to this question than that found in John Quincy Adams's work on the "Fisheries and the Mississippi." At page 184 *et seq.* he says:

"The nature of the rights and liberties consisted in the free participation of a fishery. That fishery covering the banks which surround the island of Newfoundland, the coasts of New England, Nova Scotia, the Gulf of St. Lawrence, and Labrador furnishes the richest treasure and the most beneficent tribute that ocean pays to earth on this terraqueous globe. By the pleasure of the Creator of earth and seas it had been constituted in its physical nature one fishery, extending into the open seas to a little less than five degrees of latitude from the coast, spreading along the whole northern coast of this continent, and insinuating itself in all the bays, creeks, and harbors to the very borders of the shores. For an equal enjoyment in this fishery it was necessary to have a nearly general access to every part of it, the habits of the game which it pursues being so far migratory that they were found at different periods most abundant in different places, sometimes populating the banks and at others swarming close upon the shores. The latter portion of the fishery had, however, always been considered as the most valuable, inasmuch as it was afforded the means of drying and curing the fish immediately after they were caught, which could not be effected upon the banks.

"By the law of nature this fishery belonged to the inhabitants of the regions in the neighborhood of which it was situated.

"By the conventional law of Europe it belonged to the European nations which had formed settlements in these regions. France, as the first principal settler in them, had long claimed the exclusive right to it. Great Britain, moved in no small degree by the value of the fishery itself, had achieved the conquest of all these regions from France, and had limited by treaty within a narrow compass the right of France to any share in the fishery. Spain, upon some claims of prior discovery, had for sometime enjoyed a share of the fishery on the banks, but at the last treaty of peace, prior to the American Revolution, had expressly renounced it.

"At the commencement of the American Revolution, therefore, this fishery belonged exclusively to the British nation, subject to a certain limited participation in it, reserved by the treaty of stipulations of France.

"By an act of Parliament, passed at the reign of Edward VI,

(1547) the fisheries had been declared unlicensed, free to all the inhabitants of the realm, and in all the charters of the New England colonies the rights of fishing had been granted, with special reservations of the right of sharing in these fisheries to all British subjects. The right to use and exercise the trade of fishing upon the coasts of New England, in any of the seas thereunto adjoining, or any arms of the said seas, or salt-water rivers where they have been wont to fish, together with the power to use the shores for purposes connected with the fisheries, was expressly granted much at large, in the last charter of Massachusetts Bay as it had been in those that preceded it.

“There was a gross mistake, therefore, in the assertion that the King of Great Britain might have interdicted the enjoyment of these fisheries to the people of the province of Massachusetts Bay or the other colonies.”

“It was their birthright as British subjects; it was their special right as secured to them by charter; and the British Parliament itself could not deprive them of it, as they did, only by one of those acts which provoked and justified the Declaration of Independence.

“But reason and eloquence were vain; the bill, styled by Mr. Burke ‘the grand penal bill which passed sentence on the trade and sustenance of America’ was sanctioned by the then usual majorities of both houses of Parliament; and it is thus specially mentioned among the charges against George the Third in the Declaration of Independence:

“‘He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws; giving his assent to their acts of pretended legislation—for cutting off our trade with all parts of the world.’

“Had Mr. Russel been a member of Congress of 1776, with what admiration would that illustrious body have listened to his doctrine that the British sovereign had an absolute, unlimited control over the commerce and fisheries of the colonies, and that he needed nothing more than his maxim of *nullum tempus occurrit regi* to cut them off from them whenever and however he might think proper. Had Mr. Russel been prime minister of Great Britain in 1775, with how much easier and speedier a process than by an act of Parliament would he have cut off the commerce and the fisheries of the colonies. His doctrine of the royal prerogative and his maxim of *nullum tempus occurrit regi* would have sufficed with a mere order in the council to accomplish the work.

“This act of Parliament continued in force during the whole course of the American Revolution, and the Declaration of Independence was subsequent and partly founded upon its enactment, when the parties came to negotiate that treaty of peace, or rather the preliminary articles of November, 1782, to which the whole argument applies, their situations and relative interests, claims, and principles were certainly very peculiar. The whole fishery (with the exception of the reserved and right of France) was the exclusive property of the British Empire. The right to full participation in that property belonged by the law of nature to the people of New England, from their locality.

“Their natural right as British subjects had, as the United States maintained, been tyrannically violated, but not extinguished; and, as the other party of the negotiation asserted, forfeited by their rebellion and lawfully taken from them by an act of Parliament, the supreme superintending authority of the whole Empire.

“It was one of the questions upon which the war itself had hinged, and in the interval between the Declaration of Independence and the negotiation of peace, it had been among the subjects of the deepest and

most anxious deliberations of Congress how this great interest should be adjusted at the peace. In the second volume of secret journals of the Confederate Congress recently published, it will be found that from the 17th of February to the 14th of August, 1779, the various questions connected with this interest formed the subject of the most earnest and continual debates, and the numerous propositions upon which the yeas and nays were taken manifestly show the determination with which they resolved in no event, however, to abandon the right to share in the fishery; and the perplexities under which they labored in deciding, as well whether it should or should not be made a *sine qua non* for peace, as how they should secure the continuance of that portion of the fishery which—the boundary line which they ultimately concluded to accept—would fall within the immediate territorial jurisdiction of the provinces to remain in British possessions.”

Is there a word in all this of confining our rights within the 3-mile limit, or any other limit, or does it not maintain the absolute freedom of the fisheries to the people of the United States? We demanded the fisheries on our own coasts and those which would fall within the territorial jurisdiction of the provinces as well.

If this comprehensive language—every line of which shows the freedom of the coast fisheries to the people of the United States—we say, if this comprehensive language needs any reënforcement we have but to turn in any direction to find “confirmation strong as proofs of Holy Writ.” The very charter of Massachusetts, as well as the other colonial charters, show the rights of fishery to be common to all the colonies.

“And further, our expressed will and pleasure is, and we do by these presents for us, our heirs, and successors, ordain and appoint that these our letters patent shall not in any manner enure or be taken to abridge, bar, or hinder *any of our loving subjects, whatsoever, to use and exercise the trade of fishing upon the coasts of New England*, but that they and any of them shall have full and free power and liberty to continue and use their said trade of fishing, upon the said coasts, in any of the seas thereunto adjoining, or any arms of the said seas or salt-water rivers, where they have been wont to fish.” (U. S. Constitutions and Colonial Charters, Vol. 1, p. 954.)

The colonists of New England, at the Declaration of Independence, were enjoying equal rights and a joint ownership with the British fishermen of the whole of the North Atlantic fisheries, and as the United States were successful in maintaining their independence, they insisted, in the negotiations for peace, that these extraterritorial rights were not lost to them by the severance of their relations with the British Crown and should be expressly recognized in the treaty of peace, and that the rights in their own waters were exclusive of Great Britain.

These rights had been confirmed by the charters of New England, and when the British Parliament passed the act of March, 1775, to prohibit the colonies of New England from fishing on the banks of Newfoundland, sixteen peers, among them Lord Camden and Lord Rockingham, protested against the passage of the act, “because the people of New England, besides the natural claim of mankind to the gifts of Providence on their own coasts, are especially entitled to the fishery by their charters, which have never been declared forfeited.” (American Archives, 4th series, 1774.)

By the charter of Massachusetts Bay of 1691, the province of Maine and the Territory of Acadia or Nova Scotia, with the lands (now New Brunswick) lying between Nova Scotia and Maine, were annexed to Massachusetts, and the northerly and easterly limits of the province

of Massachusetts under that charter extended to the river St. Lawrence and down the river St. Lawrence and along the Atlantic coast of Nova Scotia to the Gulf of St. Lawrence. Although in 1758 a separate constitution was granted to Nova Scotia, the charter of Massachusetts Bay of 1691 continued in force, and Massachusetts and Maine remained under and were entitled to the benefit of its provisions until the Revolution.

Charters of Massachusetts Bay of 1627 and 1691;

Charters and Constitutions of the U. S., part 1, pages 932-954;

John Adams to William Tudor. Adams's Works, Vol. x, page 354

Haliburton's Historical and Statistical Account of Nova Scotia, Vol. 1, pages 73, 144, 210.

Winsor's Crit. and Nor. Hist. America, Vol. 5, pages 91, 479-481.

By the charter of 1691 it was expressly provided that the subjects of the British Crown—

“That they and every of them shall have and free power and liberty to continue and use their said trade of fishing upon the said coasts, in any of the seas thereunto adjoining, or any arms of the said seas, or salt-water rivers where they have been wont to fish, and to build and to set upon the lands within our said province or colony lying waste and not then possessed by particular proprietors, such wharves, stages, and workhouses as shall be necessary for the salting, drying, keeping, and packing of their fish, to be taken or gotten upon that coast, and to cut down and to take such trees and other materials there growing, or being or growing upon any parts or places lying waste and not then in possession of principal proprietors, as shall be needful for that purpose, and for all other necessary easements, helps, and advantages concerning the trade of fishing there in such manner and form as they have been heretofore at any time accustomed to do, without making any willful waste or spoil, anything in these presents contained to the contrary notwithstanding.”

The phrase “continue to enjoy unmolested the right to take fish,” and “used at any time heretofore to fish,” in the treaty of 1783, are only repetitions of the expressions “continue and use their said trade of fishing” where they have been wont to fish and as they have been heretofore at any time accustomed to do, in the charters of 1629 and 1691; and word “liberty” is found in the charters of 1627 and 1691 as well as in the treaty of 1783. The treaty of 1783 was a little more than a confirmation of the ancient and chartered rights recognized in the charters of 1627 and 1691. (Sabine's Report on the Fisheries, pp. 237-230; Winsor's Crit. & Nar. Hist. America, Vol. 5, p. 407.)

The next important discussion was the terms of the treaty of peace of 1783 with Great Britain.

There can not be found a single word emanating from a loyal American of that period which would indicate that the fisheries were to be divided in any way; on the contrary, every word uttered, every thought conceived, shows that in considering the rights of fishery on our own coasts and abroad we were one people, that as our greatest commercial and national strength had been derived from the fisheries, it was a matter in which locality could never be considered. It was the great right of taking the gift of the Creator from the seas and using it for the benefit of all the people of the United States.

In confirmation of this, at page 96 of Adams's “Fisheries and the Mississippi,” he says: “By the third article of the treaty of 1783, it was agreed that *the people of the United States* should continue to enjoy the fisheries of Newfoundland and the Bay of St. Lawrence, and at all

other places on the sea where the inhabitants of both countries used at the time theretofore to fish;" and also they should have certain fishing liberties on all the fishing coast within the British jurisdiction of Nova Scotia, Magdalen Islands, and Labrador.

The title by which the United States held those fishing rights and liberties was the same.

It was the possessory use of the right, or in Mr. Russel's more learned phrase, of the *jus meræ facultatis*, at any time theretofore as British subjects, and the acknowledgment of Great Britain of its continuance to the people of the United States after the treaty of separation.

It was a national right; and therefore as much a right, though not so much an immediate interest, to the people of Ohio and Kentucky—aye, and to the people of Louisiana, after they became a part of the United States—as it was to the people of Massachusetts and Maine.

The fishery was disposed of in the third article.

As common property it was still held in common.

"As a possession it was to be held by the people of the United States, as it had been held before. It was not like the lands partitioned out by the same treaty, a corporal possession, but, in the technical language of the English law, an incorporeal hereditament, and in that of the civil law a right of mere faculty, consisting in the power and liberty of exercising a trade, the places in which it is exercised being occupied only for the trade."

John Adams, the elder, in a letter to Richard Rush, dated April 5, 1815 (Adams's Works, Vol. x, p. 160), said:

"We have a right (I know not very well how to express it), but we have the right of British subjects. Not that we are now British subjects; not that we were British subjects at the treaty of 1783, but as having been British subjects, and entitled to all the rights, liberties, privileges, and immunities of British subjects which we had possessed before the Revolution, which we never had surrendered, forfeited, or relinquished, and which we never would relinquish any further than in that treaty is expressed, our right was clear and indubitable to *fish in all the places in the sea where British subjects had fished or ever had a right to fish.*

"For all these reasons, if there is a people under heaven who could advance a claim or a color of a pretension to any exclusive privileges in the fisheries, or any rights in our part of the old British Empire more than another, that people are the inhabitants of the United States of America."

See also letter of R. R. Livingston to Benjamin Franklin, January 7, 1782; Sparks's Franklin, Vol. ix, p. 135.

Hon. Lewis Cass, in a speech delivered in the United States Senate, August 3, 1852, said:

"No treaty was needed for that purpose, nor did either Government dream of it. What we wanted was the enjoyment of *a right we had possessed since the settlement of the country, to fish near the coast when necessary, without reference to the question of jurisdiction*, and to dry the fish in proper places; and what England wanted was to reduce these claims within the narrowest limits she could induce us to accept; and the result was the resisting argument.

"We did not get the right to fish on the coast from England, nor from any other power.

"We got it from Almighty God and we mean to hold on to it, through the whole extent of the great deep, now, in the days of our strength, as our fathers held on to it in the days of our weakness."

Substantiating the broader view of common right to the fisheries is the following from a report by Hon. S. S. Cox, to the Forty-sixth Congress from the Committee on Foreign Relations:

“The treaty of 1783 between Great Britain and the United States recognized the rights of American citizens to the fisheries, as they had been exercised before the Revolution, as fully as it did their title to the soil within the boundaries of the United States.” (House Report 1275, Forty-sixth Congress, second session.)

And the following quotation from Hon. John Jay’s letter upon this subject to the Secretary of State is pertinent:

“On May 27, 1779, it was recorded on motion of Mr. Burke, seconded by Mr. Douglas, that in no case by any treaty of peace the common right of fishing to be given up; and on June 24, 1779, they voted, that it is essential to the welfare of all the United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to the fish on the banks of Newfoundland and the other banks and *seas of North America*.”

Elaborate reports on the common right of the States to the fisheries, on January 8 and August 16, 1782 (111 Secret Journal of Congress, pp. 151–161), shows how thoroughly the subject has been studied.

But the grandest and at the same time the most comprehensive description of this great right of common fishery, which has always existed and been enjoyed by citizens of the United States “until recently,” was that given by Hon. Richard H. Dana, jr., in his argument before the Halifax Commission of 1877, on behalf of the United States Government.

At page 1652 of Volume ii, he uses this language:

“Yes, gentlemen of the commission, every one of the charters of Massachusetts gave her a right to fish in the northeastern seas, and that, you will observe, was irrespective of her geographical position. * * *

“The last Massachusetts charter granted by the Crown is in these words: It assures to Massachusetts, ‘the right to use and enjoy the trade of fishing on the coast of New England, and all the seas thereto adjoining or arms of said seas, where they have been wont to fish.’

“The test was the habit of the people, ‘where they had,’ in the good old Saxon English, ‘been wont to fish.’

“*It did not depend on geographical lines. They had no idea then of excluding the colonies from 3 miles of the shore and giving them a general right on the seas; but whatever Great Britain had here she shared with the colonies to the last.*

“The right to fish in the sea is in its nature not real, as the common law has it, nor immovable, as termed by the civil law, but personal. It is a liberty. It is a franchise, or a faculty. It is not property pertaining to or connecting with the land. It is incorporeal. It is aboriginal. The right of fishing, dropping line or net into the sea, to draw from it the means of sustenance, is as old as the human race, and the limits that have been set about it have been set about it in recent and modern times; and wherever the fishermen are excluded a reason for excluding them should always be given. I speak of the free swimming fish of the ocean, followed by the fishermen through the deep sea, not of the crustaceous animals or any of those that connect themselves with the soil under the sea or adjacent to the sea, nor do I speak of any fishing that requires possession of the land, or any touching or troub-

ling the bottom of the sea. Against them it is a question, not of admission, but of exclusion.

"These fisheries are not property. Nobody owns them. They come we know not whence, and go we know not whither. The men of science have been before us, and fishermen have been before us, and they do not agree about it.

"Prof. Baird, in a very striking passage, gave it as his opinion that these fish retire in the winter to the deep sea or to the deep mud beneath the sea and are hidden there; and in the spring they invade this great continent as an army, the left wing foremost, touching the Southern States first, and last the northern parts of the British colonies. Others think they go to the south and come back in lines and invade this country; but at all events they are more like those birds of prey and game which come to the north in the summer and appear again and darken the sky as they go south for the winter. They are no man's property; they belong by a right of nature to those who take them, and every man may take them who can. It is a totally distinct question whether in taking them he is trespassing upon private property, the land or park of any individual holder.

"The final cause, as the philosophers say, of the existence of the sea fish is that they shall be caught by man and made an article of food by man. It is an innocent use of the high seas—that use which I have described. More than that, it is a meritorious use. The fisherman who drops his line into the sea creates a value for mankind, and therefore his work is meritorious.

"It is, in the words of Burke, 'wealth drawn from the sea;' *but it is not wealth until it is drawn from the sea.*

"Now, these fishermen should not be excluded except from necessity—some kind of necessity; and I am willing to put at stake whatever little reputation I may have for the acquaintance with the jurisprudence of nations (and the less reputation the more important to me) to maintain this position, that the deep-sea fishermen, pursuing the free swimming fish of the ocean with his net or his leaded line, not touching shores or troubling the bottom of the sea, is no trespasser, though he approach within 3 miles of a coast, by any established recognized law of all nations. It may possibly cross the minds of some of this tribunal that perhaps this is not of very great importance to us here, but from the reflection I have been able to give to this case (and I have had time enough, surely) it seems to me that it is. I wish it to be fully understood what is the nature of that exclusive right for the withdrawal of which we are asked to make a money compensation. What is its nature, its history, and its object?

"In the time of Queen Elizabeth this matter seemed to be pretty well understood in England.

"Her Majesty sent a commission, an embassy, to Denmark on the subject of adjusting the relations between the two countries, and among the instructions given the ambassadors were these:

"'Though possession of the land close to the sea,' says this remarkable letter of instructions, 'may yield some oversight and jurisdiction, yet use not princes to forbid passage or fishing, as is seen by our law of England.'

"There is much more to the same effect. So that whatever claim of jurisdiction over the sea a neighboring nation might make, whatever claim to property in the soil under the sea she might make, it was not the usage of princes to forbid passage, innocent passage, or fishing and

catching of the free swimming fish, wherever they might be upon the high seas.

"I wish to particularly to impress upon your Honors that all the North British colonies were in possession and enjoyment of the liberty of fishing over all the Northeastern Atlantic, its gulfs and bays. There is no word indicating the existence of either a 3-mile line of exclusion or of an attaching the right of fishing to the geographical position of the colony. No, gentlemen, the Massachusetts fisherman who dropped his leaded line by the side of the steep coast of Labrador, or within hail of the shore of the Magdalen Islands, did it by precisely the same right that he fished in Massachusetts Bay, off Cape Cod or Cape Ann. Nobody knew any difference in the foundation or the test of such rights in those days. It was a common heritage not dependent upon geography. As I have said, it was conquered by the common toil, blood, and treasure, and held as a common right and possession."

"But the act of March, 1775, urged by the obstinacy of George III and his adherents to worn-out traditions, was passed. After a conflict with the colonies on the subject of the stamp act and the tea tax, that fatal act was passed, aimed at the home rule, self-government, and the trade of New England people, or, rather, I should say, in the first instance of Massachusetts, over which the contest was waged during the early part of our struggle, and attempting to undo all we had been doing for one hundred and fifty years; to revolutionize our entire political system, and instead of leaving us what we had enjoyed for that time, home rule, to substitute a government at St. James's or St. Stephen's.

"Among other things it attempted to deprive us of our right in the fisheries. The statute acknowledged the existence of the right, but Massachusetts was to be deprived of her right by an act of Parliament. Then came the debate, fiercer than ever, 'Can Parliament take from us this right?' Well, the claim rested upon the assumption that all the grants which the charters vested in us were held at the discretion of Parliament. But if Parliament could take away our fisheries, she could take away our landmarks; she could take Boston and Salem, which had been granted to us under the same charter that the fisheries had been granted; and when that act was passed, Burke and Fox and Sheridan and Barre and others, our friends in the British Parliament, called it a simple provocation to rebellion. Burke said, 'It is a great penal bill which passed sentence on the trade and sustenance of America.'

"New England refused obedience. The other colonies assisted her, and we always treated the act as void.

"Then came the war, and what was the effect of it on our title? Why, may it please you, gentlemen, I do not deny that war has been an effect, but not the kind of effect which has been contended for by the British Government and by council. I agree that war puts at hazard not only the rights of the nation, but the existence of the nation.

"At the close of the war the treaty of 1783 was made. Now, at the time when the treaty of 1783 was made Great Britain did not claim to have conquered America or to have taken from us by military force any of our rights; and the consequence was that in framing the treaty of 1783, while we altered by common consent some of the boundary lines, none by right of conquest, it was declared that the people of the United States shall 'continue to enjoy unmolested the right to take

fish of every kind on the British banks and all other banks of Newfoundland; also in the Gulf of St. Lawrence, *and all other places in the sea where the inhabitants of both countries used at any time heretofore to fish.* What could be stronger than that?

"It was an acknowledgment of a continued right possessed long before. And if any question of its construction arose it appealed to what they had been heretofore accustomed to do, 'where the inhabitants of both countries used at any time heretofore to fish.'

"The treaty of 1783 did not give us this right. We always had it. We continued to enjoy these rights without geographical limitation, and it was conceded that we did so by the treaty of 1783; and we no more depend upon a treaty gift of 1783 for the right of these fisheries than we depend upon it for the enjoyment of our right to our territory or our independence."

Senator Edmunds thus describes the right:

"Before the Revolution the inhabitants of all the British colonies in North America possessed, as a common right, the right of fishing on *all the coasts of British North America*, and these rights were, in a broad sense, accustomed rights of property.

This was a grant of recognition of property right agreed upon on a consideration, viz, the adjustment of the boundaries and the other engagements into which the United States by that treaty entered. As to the open-sea fishing, it was merely a recognition of a right common to all nations, and as to the fishing within the municipal dominion of His Majesty, on his coasts, bays, and creeks, it was an agreement that these rights theretofore existing in all the British subjects should of right belong to those British subjects who, by force of the Revolution, had become the citizens of an independent nation; and thus it was, in the partition of the territory, a reservation in favor of the people of the United States of a right which they, as British subjects, had theretofore lawfully enjoyed." (Mis. Doc. No. 109, Fiftieth Congress, first session; House report No. 3648, Forty-ninth Congress, second session.)

While much of what has just been stated and quoted might at first blush seem to refer to another and different matter, viz: American rights in foreign fisheries, a close examination will show that the principle underlying the contention of our forefathers in regard to their fishery rights in Newfoundland is directly applicable to this subject matter. Nearly all the quotations made, however, refer to and include the broad rights of fishing regardless of locality in all places where they had, as colonists, ever fished.

It could hardly be conceived that the colonists could have, as an inalienable right as subjects of the Crown, the right to take fish in waters hundreds of miles from home, in no way connected with them or the object of their settlement, and at the same time could not exercise an equal right to take fish in the corresponding waters nearest their doors. It must be remembered that this was not a right by prescription, but inherent and natural, and being such it must have existed everywhere within the limits of the jurisdiction of Great Britain; so that if a citizen of New York could take fish in the Bay of Chaleurs, he could take them under the same circumstances in Casco Bay.

The source of the difficulty of adjusting the limits of these rights is found in the more advantageous fishing in Canadian waters. The right, being a *profit a prendre*, was naturally exercised where the yield would be greatest, and therefore, the discussions, as a rule, are based upon the Canadian fisheries, although in most of the cases our own coasts are included, as the authorities conclusively show. It was the

broad right of free fishing in all the waters of the Atlantic coast, infeasible even by the high Parliament of the realm or by open rebellion and war.

As Great Britain maintained at the close of the Revolution, it would naturally be supposed that the colonists had forfeited by rebellion any rights they may have had as subjects of Great Britain, except those strictly territorial; but, as has already been shown, the right of fishery in British waters was maintained, not as a prescriptive right at all, but as possessory use of a common or joint property which they had helped to win by their prowess on hard-fought battle fields. This position was admitted as correct, as the 3d article of the treaty of 1783 shows. The introductory words of that article are very significant.

“That the people of the United States shall continue to enjoy, unmolested, the right to take fish of every kind on the Grand Banks * * * and at all other places in the sea where the inhabitants of both countries used at any time theretofore to fish.”

It is plain, therefore, that the title of all the people of the United States to all the fishery rights in all the waters of British North America was at that time clear and undisputed.

It is equally true and clear, as we have shown by abundant authority, that at the same time and almost since the discovery of the country, the people of the United States, regardless of locality, have exercised the same rights in what were known as colonial waters; that is to say, our own coast waters. The question, then, may well be asked, What did the colonies do during the Revolution to incur a forfeiture of the right to fish in the waters adjacent to each others' coasts? The exercise of an equal right in British waters they could not or did not forfeit by open, flagrant rebellion against the mother country.

In other words, a colonist residing in New York, a subject of the Crown of England prior to the Revolution, had an inalienable birthright as such colonist to fish in Buzzard's Bay, which no one, not even the Crown or Parliament, could deny or abridge; and yet, immediately after the Revolution, this right was forfeited or disappeared in some mysterious manner; that is, if the reasoning of the opponents of this bill be correct.

A patriot of New York or New Jersey or any other colony lost the right he held as a subject of the Crown to fish in Buzzard's Bay, for instance, because he sacrificed his all and fought to establish the independence of the colonies, and retained his right to fish in British waters because he rebelled and fought against Great Britain. To maintain such an absurd proposition required one to believe that each colony achieved its own freedom independently of the others, and was thereby enabled to appropriate, each to itself, the absolute control of all fishing within parallel lines drawn seaward from its boundaries. Happily for posterity, that was not the animating spirit of those times.

The genesis of that idea was reserved to a later generation. Instead, however, of this being the case, the matter is correctly and clearly stated by John Quincy Adams, as we have quoted.

“It is a national right and therefore as much a right, though not so immediate an interest, to the people of Ohio and Kentucky, aye, and to the people of Louisiana, after they became a part of the United States, as it was to the people of Maine and Massachusetts.” Not a word or a hint in all these contemporaneous quotations of any “State rights in State fisheries.” It is all “national rights in national fisheries,” and we must look to the men who made the history of that time for the truth, and not to those who would pervert history to suit a

modern idea of this subject. "Britain could with no more justice have excluded them (the colonists) from the enjoyment of the right of fishing, while they formed a part of that Empire, than they could exclude the people of London or Bristol." If so, how have we lost that right?

If we were tenants in common with her, we shall continue so, unless by our own act we have relinquished our title. Had we parted with mutual consent, we should doubtless have made partition of our common rights by treaty. But the oppressions of Great Britain forced us to a separation, and it can not be contended that those oppressions abridged our rights or gave new ones to Britain.

Our rights, then, are not invalidated by this separation, as we have kept up our claim from the commencement of the war and assigned the attempt of Great Britain to exclude us from the fisheries as one of the causes of resorting to arms. (Letter of R. R. Livingston, Secretary of State, to Dr. Franklin, January 7, 1772, 9 Franklin's Works, Sparks's Ed., p. 135.)

The renowned Secretary of State urged the oppression of Great Britain, which forced us to separate from her, as a reason in this letter for our retention of the right of fishing, while those who would deprive the States to-day of the common right must argue that it was lost because the States fought together, side by side, and were enabled thereby to establish separation. If the reason for retention be valid in the one case, and the right actually was lost to the States at the time of the Revolution, then it must follow, in the second instance, that the penalty of union and brotherhood was loss of this great right of fishery.

Is such a theory reconcilable with reason or history?

Also it has been repeatedly asserted and argued that this right was, somehow or other, swallowed up in the sovereignty of the several States that came to them as a consequence of the Declaration of Independence, and became thereby a divided right and interest. In support of this contention is generally cited the following: "When the Revolution took place the people of each State became themselves sovereign, and in that character held the absolute right to their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution." (Martin and Waddell, 16 Peters, 410.)

This case decided no more, however, than the sovereignty of the States over the soil, as we shall show hereafter.

Let us suppose, then, that at the Revolution there were thirteen independent sovereignties exercising the functions of independent government, with boundaries extending 3 miles seaward, with strength to maintain their territorial pretensions pertaining to the situation, and having international relations with the other sovereignties—what would then be the condition of this common fishing right?

If there is one proposition of international law that is fully established and accepted as binding upon all civilized nations it is this principle, as laid down by Vattel in his *Law of Nations*, p. 127:

"And though, where the catching of fish is the only object, the fishery appears less likely to become exhausted, yet, if a nation have on their coast a particular fishery of a profitable nature, and of which they may become masters, shall they not be permitted to appropriate to themselves that bounteous gift of nature as a national appendage to the country they possess, and to reserve to themselves the great advantages which their commerce may thence derive in case there be a sufficient abundance of fish to furnish the neighboring nations?"

"But if, so far from taking possession of it, the nation has once acknowledged the common right of other nations to come and fish there,

it can no longer exclude them from it. It has left the fishery in its primitive freedom, at least with respect to those who have been accustomed to take advantage of it.

"The English, not having originally taken possession of the herring fishery, or their coasts, it is become common to them with other nations."

So that, supposing for the time Massachusetts had the prerogatives of an independent sovereign nation, after the Declaration of Independence, it could not under the law of nations destroy the rights of common fishing that had belonged to its neighboring friendly sovereign powers from the discovery of the country, much less those of an ally, joined to her by the most sacred of holy alliances, offensive and defensive.

In direct confirmation of this position the following can also be cited as approving the statement of Vattel, just quoted:

"Mr. Russel, in consulting his Vattel, to find that fisheries were *jura meræ facultatis*, and therefore imprescriptable, ought to have seen what the writer very explicitly says; not that they were rights that could be lost by nonuser. He ought also to have seen, what Vattel no less clearly lays down, that although a nation may appropriate to itself a fishery upon its own coasts and within its own jurisdiction, yet if it has acknowledged the common right of other nations to come and fish there it can no longer exclude them from it; it has left the fishery in its primitive freedom, at least with those who have been in possession of it.

"And he cites the herring fishery of the coast of England as being common to them with other nations." (John Quincy Adams, "Fisheries and the Mississippi," p. 107.)

But as showing that the fishing rights were not divided or considered divisible, but remained in the same condition after the Declaration of Independence as before, "that is to say," a joint right of all the colonies or sovereigns, if you please, the treaty of commerce and alliance of 1778 with France furnishes the strongest proof. That treaty provided, "that the subjects, inhabitants, merchants, commanders of ships, masters and marines of States, provinces, and dominions of each party, respectively, shall abstain and forbear to fish in all the places possessed, or which shall be possessed by the other party; the Most Christian King's subjects shall not fish in the *havens, bays, creeks, roads, coasts, or places which the said United States hold or shall hereafter hold*; and in like manner the subjects, people, and inhabitants of the said United States shall not fish in the havens, bays, creeks, roads, coasts, or places which the most Christian King possesses or shall hereafter possess; and if any ship or vessel shall be found fishing, contrary to the tenor of this treaty, the said ship or vessel with its lading, proof being made thereof, shall be confiscated. It is, however, understood that the exclusion stipulated in the present article shall take place only and so far as the Most Christian King, or the *United States*, shall not in this respect have *granted an exemption* to some other nation." (Treaties and Conventions, p. 298, ed. 1889.)

And the following note upon these continental treaties will show their scope and effect.

"These early treaties thus uniformly asserted the nationality of the United States not only in their dealings with foreign powers but in their relations with the several States. The favored-nation clause put Prussia on the best footing in the ports of Charleston, Boston, Philadelphia, and New York, no matter what the legislatures of South Caro-

lina, Massachusetts, Pennsylvania, or New York might say." (Note, Miller on the Constitution, p. 53.)

Whoever examines the records of Congress will find that between February and August, 1779, the various questions connected with the fisheries were matters of the most earnest and continued debates, and of the most anxious solicitude. During the discussions upon a proposition to open a negotiation for peace, Mr. Gerry introduced the following resolutions:

"First. That it is essential to the welfare of these United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said States.

"Second. That an explanatory article be prepared and sent to our minister plenipotentiary at the Court of Versailles, to be by him presented to his Most Christian Majesty, whereby the said common right to the fisheries shall be more explicitly guaranteed to the inhabitants of these States than it already is by the treaties aforesaid.

"Third. That in the treaty of peace with Great Britain a stipulation be made on their part not to disturb the inhabitants of these States in free exercise of their common right to the fisheries aforesaid, and that a reciprocal engagement be made on the part of the United States.

"Fourth. That the faith of Congress be pledged to the several States that, without their unanimous consent, no treaty of commerce shall be formed with Great Britain previous to such stipulation.

"Fifth. That if the explanatory article should not be ratified by Great Britain, the minister conducting the business shall give notice thereof to Congress, and not sign any treaty of peace until their pleasure be known."

The opposition to these resolutions was determined and violent in the extreme. Those enlisted against them insisted that it was unreasonable and absurd to ask or expect that a war commenced for freedom should be continued for the humble privilege of catching fish. Mr. Gerry, who had grown up among the fishermen of Massachusetts, replied: "It is not so much fishing," said he, "as enterprise, industry, and employment. It is not fish merely which gentlemen sneer at; it is gold, the produce of that avocation. It is the employment of those who would otherwise be idle, the food of those who would otherwise be poor, that depends on your putting these resolutions into the instructions of your minister."

The majority of Congress agreed to Mr. Gerry's propositions. (Report of Lorenzo Sabine to Secretary of Treasury, Mis. Doc. 32, Forty-second Congress, second session.)

In 1814 Mr. Monroe, Secretary of State, in writing to the commissioners appointed to negotiate the treaty of peace with Great Britain, used the following language:

"Our right to the fisheries to the full extent of our territory, as defined by the treaty of 1783 with Great Britain and those of subsequent date with other powers, and to trade with all other independent nations, are not to be relinquished."

The language quoted before, however, is explicit as showing that the United States, as such, even in 1778 and 1779, prior to the treaty of 1783, prior to the Constitution, and after the Declaration of Independence, had "bays, creeks, roads, coasts, or places" where fishing could

be pursued freely, and were ready, as old John Adams said, "to fight the war over again to hold on to all their rights of fishery."

It can not in this connection be reasonably supposed that the men of Pennsylvania or Georgia or South Carolina would have insisted as they did upon the continuance of a right or liberty to fish hundreds of miles from home, the major part of the profit of which went to New England, if there had been a thought or remote conception in their minds that the States of New England could close the waters of their coasts against them at will in the exercise of the same right. It can not be conceived that such a power had an existence or was ever thought of in those days, otherwise it would not be difficult to suppose that at this time, or later, when the navigation of the Mississippi became a factor in the fishery negotiations, there would have been so strong an insistence upon the retention of the rights of fishery abroad by those who were not of New England.

But it has been stated in the recent summary of this question, that "the State in whose territorial jurisdiction fish were caught has an absolute control over them, as it has over corn raised on its soil, and has the same right to tax one as the other." If this were true, legally or historically, it might serve to control the case; but we have already shown that there existed at all times prior to the Revolution a common right to fish in the waters of all the States vested in the people of each of the States; so that even admitting that the States did at the Revolution become sovereign, as we have already stated, and acquired thereby an ownership of the soil, as laid down by the Supreme Court in *Pollard, lessee, vs. Hagan*, 3 Howard, 212 (a case relied upon by the opponents of this bill, in which, however, no right of fishing was involved), in this language:

"The shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but in the hands of the States. This power can never be used so as to affect the exercise of any national right of eminent domain or jurisdiction with which the United States have been invested by the Constitution."

Such ownership in fee could not divest the right of common fishing in the waters covering such soil; and such has been the law since the earliest period of English jurisprudence, although at one time it seemed that new conceptions of rights of fishery would oust the old principles.

In Hargrave's notes to Coke upon Littleton it is said:

"According to this passage, ownership of the soil is not necessarily included in a several fishery, and a several fishery and a free fishery are the same thing. In respect to a several fishery, where is the inconsistency in granting the sole right of fishing with a reservation of the soil and its other profits?"

"Bracton expressly takes notice of such a grant; for his words are '*servitute imponere fundo suo, quod quis possit piscari cum eo, et ita in communi vel quod alias, per se ex toto.*' (Bracton, Fo. 208.)

"Nor do we understand why a several fishery should not exist without the soil, as well as a several pasture, as to which we have shown the doctrine to be settled." (3 Hargrave's Notes to Coke upon Littleton, section 184.)

In *Malcomson vs. Odea* (10 H. L. C., 593), where the question related to a fishery granted by the Crown before Magna Charta, Miles, J., delivering the unanimous opinion of the judges, said:

"Some discussion took place during the argument as to the proper name of such a fishery, whether it ought to have been called in the pleading free, instead of a several fishery. This is more of the con-

fusion which the ambiguous use of the term free has occasioned from a period so early as that of Year Book, 7 Hy. VII, down to the case of *Holford vs. Bailey* (132, B. 426), where it was clearly shown that the only substantial distinction is between an exclusive right of fishery, usually called 'several,' sometimes 'free,' and a right in common with others, usually called 'common of fishery,' sometimes also called 'free.' The fishery in this case is sufficiently described as a several fishery, which means an exclusive right to fish in a given place, either within or without property of the soil. A common fishery, or a public common of piscary, as called by Hale, 'De Jure Mare,' which must be carefully distinguished from a common of fishery, *i. e.*, a fishery which is free to all the public." (*Neill vs. Duke of Devonshire*, 8 Appeal Cases, 153; *Elphinstone on Interpretation of Deeds*, 580; *Bennet vs. Coster*, 8 Taunton, 183.)

It is admitted that a common fishery being a profit a pendre can only exist in a tidal river or the sea. (*Pearce vs. Scotcher*, 92 B. D., 162.)

Blackstone says, citing Coke upon Littleton: "For it must be acknowledged that the rights and distinctions of the three species of fishery are very much confounded in our law books, and that there are not wanting respectable authorities, which maintain that a several fishery may exist distinct from the property of the soil, and that a free fishery implies no exclusive right, but is synonymous with a common of piscary." And the Supreme Court, in *Martin vs. Waddell* (16 Peters, 367), at page 412, uses this language:

It is said by Hale in his treatise "De Jure Maris," when speaking of the navigable waters and the coasts within the jurisdiction of the British Crown, "that although the King is owner of this great coast, and as a consequence of his propriety hath the primary right of fishing in the seas and creeks and arms thereof, yet the common people of England have regularly a liberty of fishing in the sea, or creeks, or arms thereof, as a public common of piscary, and may not, without injury to their right, be restrained of it." The principle here stated by Hale as to the public common of piscary belonging to the common people of England is not questioned by any English writer upon the subject. The point upon which different opinions have been expressed is whether since Magna Charta "either the King or any particular subject can gain a propriety, exclusive of the common liberty." But from the opinions expressed by the justices of the court of King's bench in *Blundall v. Catterall*, 5 Barn & Ald., 287, and in the case of the Duke of Somerset & Fogwell (5 Barn & Cress, 883), the question must be regarded as settled in England against the right of the King since Magna Charta to make such a grant." (p. 410.)

"In all of these colonies from the time of the settlement to the present day the previous habits and usages of the colonists have been respected, and they have been accustomed to enjoy in common the benefits and advantages of the navigable waters, and to the same extent that they have been used and enjoyed for centuries in England. And it would require very plain language in these letters patent (the grant of New Jersey to the Duke of York) to persuade us that the public and common right of fishery in navigable waters, which has been so long and so carefully guarded in England, *and which was preserved in every colony founded on the Atlantic borders*, was intended in this one instance to be taken away." (Page 414.)

In *Harden v. Jordan* (140 U. S., 371), decided in 1891, the Supreme Court say:

"With regard to grants of the government of lands bordering on

tide water it has been distinctly settled that they only extend to high-water mark, and that the title to the shore and lands under water, in front of lands so granted, inures to the State within which they are situated, provided a State has been organized and established there. *Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State, a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishing, and can not be retained or granted out to individuals by the United States.* (Weber vs. Harbour Commis. 85, U. S., 21.)

"Such title, being in the State, is subject to State regulation and control, under the condition, however, of not interfering with the regulations which may be made by Congress, with regard to public navigation and commerce."

From this as well as other authorities it would seem conclusive that, under the constitution, such ownership of land or soil under the sea by the States, is subject to the general commercial rights of *fishing and navigation*.

Among the more modern authorities, which are legion, may be cited the following:

"The separation of the colonies rendered necessary not only their recognition, but the definite and precise adjustment of their territories and possessions, and among the latter was recognized, not as a grant or a concession, but as an existing right, the use of the fisheries, not only as they had been used, but as they even should be used by British subjects. Reserving the territorial and jurisdictional rights in the adjacent shores to the owners of the land, the fisheries, the right to use the waters for the purpose of fishing was made a joint possession." (William Henry Trescott, before Halifax Commission, Vol. II, page 1640.)

And again, at page 1639, Mr. Trescott said:

"As to the exceedingly able and interesting brief, submitted by the other side (Great Britain), I am not disposed to quarrel with it.

"It refers entirely to the question of territorial right, and the question of extent of jurisdiction.

"Our claim to fish within the 3-mile limit is no more an interference with the territorial and jurisdictional rights of Great Britain than the right of way through the park would be an interference to the ownership of the property.

"MR. THOMPSON. Do you mean to say there would be no interference there?

"MR. TRESCOTT. Certainly not. It would be simply a servitude. You do not mean to say that my right to go through your farm interferes with the fee simple of your property?

"MR. THOMPSON. It does not take away the fee simple, but interferes with the enjoyment of the property.

"MR. TRESCOTT. I simply say that it does not interfere with the territorial or jurisdictional right."

Which is all the States ever had, but that only for police, health, and kindred regulations. That the fisheries were not, however, included in the territorial or jurisdictional rights is ably shown by the Hon. Richard H. Dana, jr., in his masterly argument before the Halifax Commission.

"I am naturally led to the question: Does fishing go with the 3-mile limit? I have the honor to say to this tribunal that there is no decision to that effect, though I admit that there is a great deal of loose language in that direction.

"I do not raise any question respecting those fish that adhere to the soil or to the ground under the sea. But on what does the 3-mile jurisdiction rest, and what is the nature of it?"

"I suppose we can go further than this and say that it rests upon the necessities of the bordering nation; the necessity of preserving its own peace and safety and of executing its own laws.

"I do not think there is any other test. Then the question may arise, and does, whether in the absence of any attempt by statute or treaty to prohibit a foreign vessel from following with the line or the seine and net the free swimming fish within that belt, that that act makes a man a trespasser by any established law of nations? I am confident it does not.

"That, may it please the tribunal, is the nature of this 3-mile exclusion, for the relinquishment of which Great Britain asks us to make pecuniary compensation. It is one of some importance to her, a cause of constant trouble, and, as I shall show you, as has been shown you already by my predecessors, of very little pecuniary value to England in sharing it with us or for us to obtain it, but a very dangerous instrument for two nations to play with." (Vol. 2, p. 1664.)

"By the British municipal laws, which were the laws of both nations, the property of fishery is not necessarily in the proprietor of the soil where it is situated. The soil may belong to one individual and the fishery to another. The right to the soil may be exclusive, while the fishery may be free or held in common." (Annals of Congress, Fifteenth Congress, second session, p. 1466.)

But it is not necessary to pursue this inquiry further.

The fact remains that at the time of the formation of the Constitution there was a common possessory use of a right to fish in all the coast waters, bays, creeks, roads, etc., of the Atlantic coast, enjoyed by all the States, and any territorial rights they may have acquired were charged with this "servitude," or by whatever name it may be called.

If, as the opponents of this bill contend, this has all vanished, it becomes pertinent to inquire, What, then, became of the right?

II.

The answer involved in the question just propounded brings us to the consideration of the second proposition: What is the power of Congress over these fisheries under the Constitution, and how, if at all, has it been exercised, and what are the limitations of the power?

It was strongly argued at the time of the Revolution that American rights and "fishery liberties could be lost only by the *express* renunciation of them, or by acquiescence in the principle that they were forfeited, which would have been a tacit renunciation." If our rights as a whole people in British waters could be lost only by direct renunciation or admitted forfeiture, it is difficult to see how the citizens of any State could lose a similar right, except by a corresponding act.

There is no record anywhere of any disclaimer or renunciation of this right of fishery having been filed on behalf of any of the States, so that it must exist in some form or other to-day as it existed prior to the Constitution.

To ascertain its whereabouts we have only to examine the records of the convention that framed the Constitution to discover exactly where the framers of that instrument considered it rested, and follow that up by an account of what has been done, and by whom, in the ex-

ercise of the power invoked in this bill to locate with precision the present depository of the control of the coast fishery. It would seem that a confusion of opinion existed upon this subject of the regulation of the fisheries between Congress and the courts, but an examination of both sides will show that they are perfectly reconcilable on the basis of an existing power in the Congress over the whole subject-matter to exercise, in whole or in part, when it shall in its wisdom deem wisest.

But, of course, powers invested in Congress must find their warrant in the Constitution, and so, before going into a discussion of the cases and statutes enacted, we will examine the sources of this power.

The "people of the United States" who "formed a more perfect Union," to promote "the general welfare" and establish domestic tranquillity, were the same inhabitants of the United States who should "continue to enjoy unmolested the right to fish" in all the waters of the Atlantic Ocean and tributaries.

These fishing rights were of most value and consequence to New England, because the best fishing grounds were on their own coasts and other fisheries were nearest to them, and hence when the navigation of the Mississippi was called in to stand as an offset to the fisheries some of the Southern members thought, as has been cited, the sacrifice too great, and were inclined to yield our right to the bank fisheries, but the absolute freedom of the fisheries was finally made an ultimatum of peace.

Taking this great dispute as a starting point and going thence to the deliberations of the constitutional convention, it is not unreasonable to deduce from what was then said and done that the whole subject of fishery rights, being, as we shall soon show, one of the most important matters that engaged their attention, was merged, by the tacit consent of all, in the General Government in the primal clause of the Constitution to "promote the general welfare and establish domestic tranquillity."

Let us examine some of the debates, which recall the importance of the subject and serve to show the commercial importance of the fisheries before and immediately after the formation of the Constitution, and then examine the subject fully in its relation to the Constitution.

Thus, upon the proposition that "no treaty shall be made without the consent of two-thirds of the members present," and upon Mr. Madison's suggestion to "except treaties of peace," Mr. Gerry was of the opinion that in such treaties a greater, rather than a less, proportion of votes should be required, for the reason that in terminating hostilities our "dearest interests will be at stake, as the fisheries, territories," etc.

So, too, Mr. Gouverneur Morris expressed the sentiment that "if two-thirds of the Senate should be required for peace the legislature will be unwilling to make one for that reason, on account of the fisheries or the Mississippi, the two great objects of the Union."

The records of the discussions in the conventions of the different States for the adoption or rejection of the Constitution are less fragmentary. In that of South Carolina, Charles Cotesworth Pinckney, in reply to some ill-natured remarks against New England, generously said that in the Revolution "the Eastern States had lost everything but their country and freedom;" that "it was notorious that some ports at the eastward which used to fit out one hundred and fifty sail of vessels do not now fit out thirty; that their trade of shipbuilding, which used to be very considerable, was now annihilated; that their fisheries were trifling, and their mariners in want of bread," and that "the South

were called upon by every tie of justice, friendship, and humanity to relieve their distresses."

In the convention of Virginia Mr. Grayson affirmed that "it is well known that the fisheries and the Mississippi are balances for one another; that the possession of one tends to the preservation of the other."

The pure and highly gifted Fisher Ames thus spoke:

"It is scarcely possible to maintain our fisheries with advantage if the commerce for summer fish is injured, which I conceive it would be very materially if a high duty is imposed upon this article; nay, it would carry devastation throughout all the New England States; it would ultimately affect all throughout the Union. * * *

"The taking of fish is a very momentous concern. It forms a nursery for seamen, and this will be the source from which we are to derive maritime importance. It is the policy of some nations to drive us from this prolific source of wealth and strength, but what their detestable efforts have in vain endeavored to do you will accomplish by a high duty on this article.

"In the convention of Massachusetts one member observed that as the different members of the confederacy regulated their commerce at pleasure, and did not even protect the coasting trade of the country, 'a vessel from Rosaway or Halifax found as hearty a welcome with its fish and whalebone at the Southern ports as though it was built, navigated, and freighted from Boston or Salem,' and that 'this would continue to be the case unless a more perfect union of the States was formed,' while a second member remarked that abroad we were held in contempt, for since the war we have been engaged in 'commerce with six different nations of the globe, and if he might believe good, honest, credible men,' our position with them was like that of a 'well-behaved negro in a gentleman's family.'

"The sentiments thus uttered—North and South—indicate the feelings of eminent statesmen of the time, as well as reveal to us some of the arguments in favor of the adoption of the Constitution; and serve, moreover, to show that the branch of industry at present so fallen in in public estimation was continually referred to by our fathers in connection with and as equivalent to 'the Mississippi,' or the western country." (Sabine's report, p. 144.)

Fisher Ames said in another discussion:

"I conceive, sir, that the present Constitution was dictated by commercial necessity more than any other cause.

"The want of an efficient government to secure the manufacturing interests and to advance our commerce was long seen by men of judgment and pointed out by patriots solicitous to promote the general welfare. If the duty which we contend against is found to defeat these objects I am convinced the representatives of the people will give it up. I trust that gentlemen are well satisfied that the support of our agriculture, manufactures, navigation, and fisheries are objects of very great moment. When gentlemen contemplate the fishery they admit its importance and the necessity we are under of encouraging and protecting it, especially if they consider its declining situation; that it is excluded from those advantages which it formerly obtained in British ports, and participates but in a small degree of the benefits arising from our European allies, whose markets are visited under severe restrictions; yet, with all these discouragements, it maintains an extent which entitles it to the fostering care of Government. * * * In short, unless some extraordinary measures are taken to support our fisheries, I do not see what is to prevent their inevitable ruin. It is a

fact that near one-third of our fishermen are taken from their profession—not for want of skill and abilities in the art, for here they take the rank of every nation on earth—but from the local, chilling policy of foreign nations, who shut us out from the avenues to market. If, instead of protection from the Government, we extend to them oppression, I shudder for the consequences.” Still further: “It is supposed that the fishermen must be poor if they are not able to bear the tax proposed. I contend they are very poor; they are in a sinking state; they carry on the business in despair. But gentlemen will ask us, ‘Why, then, do they not quit the profession?’ I answer in the words that are often used in the eastern country respecting the inhabitants of Cape Cod—‘They are too poor to live there, and are too poor to remove.’”

Said Mr. Gerry: “At a time when the policy of every country is pointed against us, to suppress our success in the fisheries, when it is with extreme difficulty that it continues its existence, shall we lay burdens upon it which it is unable to support? If this important interest is injured it will not only destroy the competition with foreigners, but will induce the people to sell their property in the United States and remove to Nova Scotia or some other place where they can prosecute their business under the protection of the Government. * * * I will not reiterate the arguments respecting the fisheries; it is well known to be the best nursery for seamen; the United States have no other; and it can never be the intention of gentlemen to leave the navigation of the Union to the mercy of foreign powers. It is of necessity, then, that we lay the foundation of our maritime importance as soon as may be, and this can be done only by encouraging our fisheries. It is well known that we have a number of rivals in this business, desirous of excluding us from them. This consideration of itself is sufficient to induce a wise legislation to extend every encouragement to so important a concern.”

Congress were not unmindful of these representations and appeals.

In 1790 Washington, in his speech to Congress, remarked that “our fisheries and transportation of our own produce offer us abundant means for guarding ourselves against” the evil of depending upon foreign vessels.

The Senate waited upon the President and the Vice-President with an address. Among its topics we find the following: “The navigation and the fisheries of the United States are objects too interesting not to inspire a disposition to promote them by all the means which shall appear to us consistent with their natural progress and permanent prosperity.”

President Jefferson, in his message to Congress in 1802, spoke of “fostering our fisheries as nurseries of navigation, and for the nurture of man,” as among “the landmarks by which we were to be guided in all our proceedings;” and made further allusion to the subject in his annual communication of the following year.

“In tracing the origin and progress of the fisheries of New England, we have seen that they have furnished our first articles of export and laid the foundation of our navigation and commerce. It was so in Europe of the present maritime powers of the Old World.

“There is scarcely one that does not owe much of its commercial prosperity to the same branch of industry.

“The fisheries are identified, indeed, with the earliest mention of commerce.” (Sabine’s report, p. 122.)

The following, from a speech of the Hon. Hannibal Hamlin, of Maine, late Vice-President, delivered in the United States Senate August 3

and 5, 1852, establishes the commercial status of the fisheries firmly:

"I beg leave also to call the attention of the Senate to an extract from the message of Jefferson, in the early history of the country, calling the attention of the Government to the importance of this branch of industry. I quote from his message of December 15, 1802. He says:

"To cultivate peace and maintain commerce and navigation in all their lawful enterprises; to foster our fisheries and nurseries of navigation and for the nurture of seamen are the landmarks by which we are to guide ourselves in all our proceedings."

"He states very succinctly the importance of the fisheries, *in a national point of view*, as a school in which to train the seamen of our commerce and Navy. This shows very clearly the importance placed upon the fisheries by France, by England, by all great or commercial nations, and by our own Government.

"And, sir, that importance is in no way diminished at this period of time. We are to rely upon them now and hereafter to maintain our supremacy upon the ocean.

"A like lesson could be drawn from the history of Spain, when her commerce and her navy had reached its culminating point. She, too, drew her support from the fisheries in which she then participated, and which she then held.

"This branch of industry has always been considered by the English Government as one of very great importance; and she owes it to the hardy seamen that she has educated, that her commerce has been found in every quarter of the world. She owes it to this class of men that she has been enabled to maintain a naval superiority over any power that has ever existed."

And, again, in the same address, he says:

"Mr. President: The magnitude and importance of this question are such that I need make no apology for inviting the attention of the Senate and the country to its careful consideration. The interests of Maine and Massachusetts are more directly involved than those of any other State. But it is a question that rises above mere localities and becomes one of national importance. It affects deeply our national honor, and the expression of this Senate to the contrary is a certain indication that our just rights are to be maintained. The great interests of commerce and navigation, as well as those of our Navy, are intimately connected with the subject of the American fisheries, which are well regarded as the great fountains of commercial prosperity and naval power.

"Holland also furnishes a remarkable example of the prosperity and commercial power of that country, in connection with her fisheries and her seamen. Indeed, sir, the old Dutch proverb is that the city of Amsterdam was built on fishes' bones. When Holland was the mistress of commerce, as she was from the year 1588 to year 1750, Amsterdam was perhaps the first commercial city of Europe. History informs us that that distinction was obtained by her fisheries and her commerce. Indeed, she had little else. By her fisheries she won this great commercial power, and that commerce was sustained by her fisheries.

"I have thus briefly, Mr. President, called the attention of the Senate to the importance of these fisheries as the great source and fountain of our commercial and naval prosperity and the great fountain and source of the commercial and naval prosperity of every maritime nation that has existed. Thus hastily have I presented, as far as I have been able, the amount, the value of our fisheries, the number of men employed, and the predictions of these fisheries—all showing their impor-

tance and imposing upon us the obligation to maintain the just rights of our fishermen and to sustain them in what properly belongs to them." (In United States Senate August 3 and 5, 1852.)

It would seem, then, most reasonable that, in addition to the "general welfare," the control of the fishing rights, which history establishes as having existed at the time of the formation of the Constitution, in all the States as a joint tenancy or right of common fishery, was given to Congress by Article 1, section 8:

"Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

In this connection it must be borne in mind that the commerce of our forefathers was an entirely different thing from the commerce of to-day. A thousand advancements have enlarged the scope of the term and included in its meaning regulations of subjects beyond their wildest dreams; and others of greater importance to them have almost entirely disappeared as factors of commercial enterprise.

Even the primary and most universal object of Governmental control—navigation—was confined at that time to sailing vessels, and these limited in number, so that in considering this matter we must remember that three-fifths of all the export commerce and transportation facilities controlled by the people of the United States at the Revolution consisted of the fisheries and products of the vessels employed therein and tobacco, and that more than one-half of the shipping owned in this country was employed in the fisheries. In the cod fisheries of Massachusetts alone, at the formation of the Constitution, there were employed 665 vessels, of tonnage 25,630 and requiring 4,405 men to man them. In our day, when commerce is as diversified and various as the abundant resources of the most progressive age in the world's history could supply, and in which the fisheries play hardly a supernumerary's part, we must, in order to comprehend the nature of the relation of the fisheries to commerce, go back and ascertain, if possible, what the authors of the Constitution meant by commerce and what commerce meant to them. Looking at it in the light it is not difficult to comprehend that the fisheries, being the foundation of their commerce, must have occupied a preëminent place in any system of commercial regulation devised by them. The Supreme Court has given a number of definitions of commerce, all of which show clearly that the term commerce, under the Constitution, embraces a "variety of widely diversified interests."

Chief-Justice Marshall, in *Gibbons vs. Ogden* (Wheaton, p. 189, 1824), the first case that arose under the article, thus defines it:

"The subject to be regulated is commerce, and our Constitution being, as was aptly said at the bar, one of enumeration and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, *to buying and selling or the interchange* of commodities, and do not admit that it comprehends navigation.

"This would restrict a general term, applicable to many objects, to one of its significations."

In the concurring opinion in the same case Mr. Justice Johnson thus defines commerce:

"Commerce in its simplest signification means an exchange of goods, but in the advancement of society labor, transportation, intelligence, care, and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, and the agent and their various operations become the objects of commercial relation.

"Shipbuilding, the carrying trade, and the propagation of seamen are such vital agents of commercial prosperity that the nation which could not legislate over these subjects would not possess the power to regulate commerce."

Said the Supreme Court, in *Brown vs. Maryland*:

"It is not, therefore, matter of surprise that the grant should be as extensive as the mischief and should comprehend all foreign commerce and all commerce among States. To construe the power so as to impair its efficacy would tend to defeat an object in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity. The power is coextensive with the subject on which it acts, and can not be stopped at the external boundary of a State, but must enter its interior." (*Brown vs. State of Maryland*, 12 Wheaton, p. 446.)

In its constitutional sense, then, commerce means all the vital agents that enter into the general business life of the whole community in all their varying relations to that life. The Supreme Court has given numerous definitions, all expressing the same broad, comprehensive idea, and removing it from the narrow definition that would limit it to mere bartering of commodities.

That this broader conception was the meaning intended by the framers of the Constitution becomes manifest when it is recalled that under the Confederation commerce of all kinds, including the fisheries, had decayed, and the commercial relations of the several States were in inextricable confusion and no centralized power being in existence to regulate and control them, it was apparent that unless liberal power was given to some central head to establish and regulate all commercial relations of the people on a basis of a system of uniform and general laws, ruin must inevitably follow. (*Gibbons vs. Ogden*.)

In 1771 we find a resolution presented in the legislature of New Jersey by one of the most enlightened men of his day, Dr. Westerspoon, affirming that it is indispensably necessary that the United States in Congress assembled should be vested with the right of superintending the commercial relations, that none may take place that shall be partial or contrary to the common interests.

When Mr. Adams was abroad he said:

"Congress, three or four years ago, when they did me the honor to give me a commission to make a treaty of commerce with Great Britain, gave me positive instructions not to make any such treaty without an article acknowledging our rights to the fisheries." (*Adams's Correspondence*.)

In the *Metropolitan Bank vs. Van Dyck* (27 N. Y., 508), Mr. Justice Marvin said:

"A leading object of the Constitution was to get rid of all the conflicting commercial interests, and as to commerce to affect the union of all the people of the United States, great and small, and make them one people, one nation, without divided interests or conflicts.

"This was a leading idea of the Constitution, and to me it has always seemed a valuable one."

The Supreme Court, in two cases at least, has connected "navigation and fisheries" as two of public purposes of the waters and shores of the United States (*Hardin vs. Jordan*, 140 U. S., 371; *Martin vs. Waddell*, 16 Put., 367).

We have already cited numerous other authorities establishing the same principles, but perhaps the matter has never been more ably or fully considered than in a report made from the Committee of Commerce

of the Forty-sixth Congress, by Mr. Acklen, of Louisiana, upon two bills, Nos. 1858 and 1355, in which the same question exactly is discussed as is involved in this bill, in the following terse sentences:

It is unquestionably true that, before the adoption of the Constitution, each State as a sovereign power had the exclusive right to regulate its commerce among its citizens and foreign nations as a sovereign power; then that right of eminent domain over the waters of its coast, as settled by the law of nations, must have existed; but it is nowhere questioned that the right of regulating commerce now is vested in the General Government; and with this cession of the right of regulating commerce the States also ceded all rights of control over the * * * fisheries, *if they ever possessed them*, to the General Government. The parts of the Constitution with which this law (Maine act of 1877,) comes directly into conflict are those contained in article one, Section VIII, and Article IV, Section II.

“Your committee think it an error to assert that the powers delegated to the Federal Government should, in all cases, receive the strictest construction. When the Constitution was adopted it was impossible for the framers to provide therein specially for each and every case that might arise in the future. Therefore, in keeping with the increasing needs of an advanced civilization, in justice to our national Government, as well as to the citizens of the different States, a liberal construction of the powers of Congress under the Constitution is manifestly required for general protection. It will neither be in the interest of the people of the different States nor for the benefit of the country at large to put the national Government in a straight jacket by the strictest and the most illiberal construction of the Constitution which our forefathers framed for the benefit of the United States at large, as well as for the protection of the liberties of the individual citizen.

“Now, nothing is more complex than commerce, and in such an age as this no words can embrace a wider field than commercial regulation. Almost all the business intercourse of life is connected incidentally, more or less, with commercial regulations. It is only necessary, therefore, to apply to this part of the Constitution the following well-settled rules of construction. Some powers are holden to be exclusive in Congress; others from the prohibitions, to the States, of exercising similar powers, and others from the nature of the powers themselves.

“It has been by this mode of reasoning that courts have always adjudicated such important questions, and in the opinion of your committee this same mode is proper here, as some powers have been holden exclusive and others not so under the same form of expression, from the nature of the different powers, respectively. So, where the power over one subject is given in general words, like the power to regulate commerce, the true method of construction would be to consider whether this power extends to the merits of this case and embraces the fisheries, as well as the jurisdiction over the sea.

“It is in vain to look for a precise and exact definition of the powers of Congress, and this one is among that number. The Constitution did not undertake the task of making such exact definitions. In conferring powers it proceeded in the way of enumeration, stating the powers conferred, one after the other, in few words; and where the power was indefinite or complex in its nature, as it is in this case, its understanding must necessarily be judged of by the character of the case, limited by its object and by the nature of the power conferred.

“Were we to admit the right of each State to legislate over the sea fisheries of her coast, we would soon have a constant conflict between

the laws passed on the same subject by different States, which would greatly disturb these important industries if it did not utterly wreck them. In other words, all the evils for which the Constitution was intended to provide an effectual remedy would be entailed upon the country by confirming the validity of such State laws as the act now in question. * * *

“Now to the special question as to whether commerce, in that sense in which it should be considered, includes these fisheries. *Your committee think it is laboring to prove a self-evident proposition*, since the sense of mankind, the practice of the world, the contemporaneous assumption, and the continued exercise of the power, and universal acquiescence have already established the right of Congress over navigation, ship-building, the carrying trade, the propagation and training of seamen, and all subjects so closely interwoven with *these fisheries that they become not only incidental to but actually of the essence of the power to regulate commerce.*” (House Report No. 7, Forty-sixth Congress, first session.)

Much stress has been laid on an unsupported statement that “the control of the fisheries is not a regulation of commerce. Fish, when caught, as all other movable property, may become articles of commerce, but the catching of fish is no more commerce than the raising of corn or cattle;” a contention ably refuted by the report just cited.

If this view were adopted as correct it would limit commerce to “mere buying and selling” and eliminate from that power of Congress all control over matters except objects of barter and sale.

This argument was urged upon the Supreme Court in the case of *Gibbons vs. Ogden*, already referred to in this relation. It was there contended that the navigation of a vessel was not commerce, that while the cargo it transported might come within the scope of the commerce clause, the vessel itself could not be included, except as it might be a subject of sale or exchange between men.

But the Supreme Court said, no. Such a construction would place a limitation upon the power over commerce as would in effect nullify it. It is not the vessel itself, *per se*, as a commodity that brings it within the control of Congress under the commerce clause, but its relation to and its “vital agency” in the successful carrying of commercial business. The same principle applies to a thousand other subjects of commercial regulation. For instance, in *Guy vs. Baltimore* (100 U. S. R., 434).

The city of Baltimore owned some wharves in that city, and, by authority of the legislature of Maryland, made regulations that Maryland vessels should pay no wharfage, while other vessels should pay certain rates for the use of the wharves, but the Supreme Court said that charge was clearly unconstitutional, because it was a regulation of commerce.

It has not for one moment been contended that the wharf *itself*, however valuable as real estate, was a subject of commercial regulation, only so far as it bore a relation to the goods carried in vessels and landed upon it—the commerce of the port. Illustrations and authorities upon this subject are numerous, but it seems idle, in view of the broad definitions of commerce given by our Supreme Court and political economists, to waste time in refuting a proposition that has been deprived of life for near a century, viz, that the regulation of constitutional commerce is limited to objects of mere barter and sale; it is as limitless as the objects upon which it acts directly or indirectly. In this case the subject of commercial regulation, therefore, is the

fisheries in their relation to the commerce of the country, in its broadest sense, and the existence of that relation has already been shown not only to exist in reason, but by many sound authorities.

Since, then, the power to regulate the fisheries, as a subject of commerce, is vested in the United States, to be exercised when expedient to do so, it would be only natural that occasions should have arisen when Congress had been called upon to act in the premises. Such occasions have been numerous, although, from the profound silence of the opponents of the bill upon the subject of Congressional legislation, one would naturally suppose it to be an entirely new proposition. It would be of but little material assistance in the solution of this question to analyze each of the thirty-eight different statutes and treaties which have become laws of the United States bearing upon different phases of this subject. Some of them, however, have a very important bearing and will be briefly discussed.

The first act passed by the Congress in which the fisheries were recognized as a subject of the power of legislation granted to Congress, passed almost immediately after the adoption of the Constitution, was the act of February 18, 1793, to which the bill before you is an amendment, the title of which is "An act for enrolling ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," which act is still the law of the land. This act repealed that of 1789, which was an act for registering and clearing vessels, regulating the coasting trade, and for other purposes, provided for the licensing and enrollment of vessels engaged in navigation.

Before discussing the probable intent and meaning of the act the word "fisheries" is so vague and uncertain that it could hardly now be considered a direct assertion of control over the "fisheries" of the bill now before you; but it may shed light upon the whole subject to discuss the probable scope of the act as originally intended.

As was said in argument before the committee: "There could be no valid or substantial reason for enacting the statute of 1793 in lieu of that of 1789, unless it was the direct purpose of the Congress to divide the subject of commercial navigation into its principal subdivisions, the coasting trade and the fisheries, describing each by name, defining and prescribing the privileges and limitations peculiar to each other. Under the act of 1789 fishing vessels had been enrolled and licensed substantially in the same manner as under the act of 1793, and hence it may be a cause of conjecture as to the reason of the further legislation so soon after the other, but the motive becomes apparent when it is observed that, though both the coasting trade and the fisheries were parts of the great commercial world or commerce, there were yet essential differences in the modes of regulating each, and hence it was found wise to maintain their real connection and general relation to the derivative subject, but prescribe for each the regulations best suited to its operation. If the fisheries form no part of constitutional commerce, why should they be placed side by side with the coasting trade as an integral part of this act, which makes life to the coasting trade and *which is* preëminently commercial. An act which so thoroughly and comprehensively provides for the control by the Congress of two of the principal elements of commerce when employed could not long pass unchallenged, and it becomes important, therefore, before proceeding further, to ascertain, if possible, what these licenses under the act of 1793 really were intended to be, what power was intended to be granted, and then discover, if we can, their relation to each other, in order to thoroughly understand the law you are asked to amend and the nature of the amendment."

The earliest construction of the act of 1793 was given by the Supreme Court in the case of *Gibbon vs. Ogden*, 9 Wheaton, 1 (1824). The State of New York claimed, by the passage of several statutes, the right to secure to particular persons the exclusive navigation of the waters within the State by boats moved by fire or steam. The plaintiff asserted his right to navigate the same waters under the license issued to him by the United States under the law of 1793, and further contended that the laws of New York were a limitation upon the power of Congress to regulate commerce. The court decided both points unanimously in favor of the plaintiff in error. In the course of the opinion Chief-Justice Marshall used this language:

“The word ‘commerce,’ used in the Constitution, then comprehends, and has always been understood to comprehend, navigation within its meaning, and a power to regulate navigation is as expressly granted as if that term had been added to the word ‘commerce.’”

In another part of the opinion, in discussing the scope and meaning of the act of 1793, and you will observe that only the coasting-trade feature of the law was under discussion, he says:

“This section (referring to the first section act of 1793) seems to the court to contain a positive enactment that the vessels it describes shall be entitled to the privileges of ships or vessels employed in the coasting trade. These privileges can not be separated from the trade, and can not be enjoyed unless the trade may be prosecuted.”

“The grant of the privilege is an idle, empty form, conveying nothing unless it convey the right to which the privileges attach and in the exercise of which its whole value exists. To construe these words otherwise than as entitling the ships or vessels described to carry on the coasting trade would be, we think, to disregard the apparent intent of the act. The word ‘license’ means permission or authority, and a license to do any particular thing is a permission or authority to do that thing, and if granted by a person having power to grant, it transfers to do whatever it purports to authorize. It certainly transfers to him all the rights that the grantor can transfer to do that which is within the terms of the license. The license must be understood to be what it purports to be, a legislative authority to the steamboat *Bellona* to be employed in carrying on the coasting trade.”

It seems reasonable to conclude that had this question been before the Supreme Court at that time the decision would have been the same. The act under consideration included both licenses, only separated in terms because they could in that way be better regulated in their peculiar operation. Had there been a right remaining in the States to control so large a part of the merchant marine of the country then employed in the fisheries, and to restrict and annul by legislation such as now exists upon the statute books of several of the States, the license granted by the Government to engage in the fisheries, a license he so plainly interpreted as to the coasting trade, it seems incredible that the learned chief justice should have passed it by without a hint or suggestion of its existence. There can not, in that act, be found the slightest indication of any intention of the Congress to make any distinction or difference in the powers granted under these licenses. The words employed are same—precisely the same. They were derived from the same source, the same law, under the same control, and so could not fairly be separated without destroying the relation existing between them. The coasting trade, as a part of the commerce of the country, is the right to navigate the waters of the United States and transport persons and merchandise. The fisheries embrace the right to navigate

the waters and, as appendent and appurtenant thereto, the further right to take fish therefrom. If this was not the intent of the license, it seems strange that fishing vessels should be denied the right to engage in the coasting trade or any other employment under their license.

Section 4320, Revised Statutes of the United States, provides as follows:

"The master of such vessel shall also swear that he is a citizen of the United States and that such license shall not be used for any other vessel or any other employment than that for which it is specially granted."

It is scarcely possibly that the Second Congress would grant a license without constitutional authority so to do it, and in the same enactment deny to the licensee the right to the exercise of any other power whatever. It was intended originally that the license should mean exactly what it would mean if this bill before you should become a law.

The first amendment to the act of 1793 was that provided by the act of May 24, 1828 (Stat. L., Vol. 4, p. 312), which made it the duty of the collector of the district to issue "a license for carrying on the mackerel fishery." Can anything that Congress could do indicate more clearly its purpose and intention concerning the fisheries and its sense of power, at least to grant a license to take mackerel somewhere?

The act of 1793, or rather the act of 1828, was amended further by the act of Congress, February 28, 1887, section 2, which provided:

"This license (referring to the fishing license) does not grant the right to fish for mackerel other than Spanish mackerel, between the 18th day of March and the 1st day of June, inclusive, of this year."

A limitation implies the existence of a right; therefore if the act of 1887 limits the license to fish for mackerel between March and June 1, the right so to fish remains unfettered from June 1 to March 1.

There is one very peculiar feature of this law. Its title is "An act relating to the importing and landing of mackerel caught during the spawning season." A pure matter of commerce; and yet section 2 (the first section I have already recited) of the act provides as follows:

"That section 4321 of the Revised Statutes (act of February 18, 1793) is amended for the period of five years aforesaid so as to read before the first sentence as follows: 'this license does not grant the right to fish for mackerel other than for what is known as Spanish mackerel between the 1st day of March and the 1st day of June, inclusive, of this year.'"

If the license does not grant the right to fish for mackerel between March 1 and June 1, it would seem to carry with it the right to fish the balance of the year, upon the well-known principle of law that a limitation implies the existence of that which is affected by it; so that the effect of the present act would be to make the meaning of these acts plain and unequivocal, to dissipate the doubts and confusion that have surrounded them for many years, and defines the powers which the United States intends shall be exercised under its license. As it stands to-day it is a species of fraud upon the holder of every fishing license; for he neither has the right to fish nor the right to do anything else with his vessel.

The next act, which clearly defines the power of Congress to regulate the fisheries and to prohibit as well the States from exercising any control, after Congress has exercised it, is that of 1871, creating the United States Fish Commission. Sections 4395, 4396, and 4397 of the Revised Statutes of the United States provide for the appointment of a Fish Commissioner, who shall prosecute investigations and inquiries upon this subject with a view of ascertaining whether any and what diminu-

tions of the number in the food fisheries of the coasts and lakes of the United States has taken place; and also whether and what protective, prohibitory, or precautionary measures should be adopted in the premises, and shall report the same *to Congress*.

The report required to be made by the law just quoted was to the Congress for the adoption of such protective, prohibitory or precautionary measures as should be necessary in the premises. It can not be possible that it was the intention of the Congress to refer these measures to the twenty-four seaboard States for adoption or rejection, as they should see fit. It was exclusively for Congressional action. The final clause of the bill, however, seems conclusive as an assertion by Congress of the power of control over the fisheries on behalf of the Fish Commissioner at least. It provides that the Commissioner may take or cause to be taken at all times in the waters of the seacoasts of the United States, and also in the waters of the lakes, such fish or specimens thereof as may be in his judgment from time to time needful or proper for the conduct of his duties, "*any law, custom, or usage of any State to the contrary notwithstanding.*"

The Assistant Fish Commissioner testified before the committee that they had taken fish in all the waters of the United States without a complaint from any source. It would seem that if Congress has the power to exercise control over these fisheries on behalf of its own agent it could exercise the same control on behalf of any of the citizens of the United States. Ours is emphatically a Government of equal rights and powers; and to deny to the humblest citizen a right which Congress exerts in behalf of the agent of Government would practically destroy the Constitution. To carry out the provisions of this act of 1871 thousands of dollars have been appropriated to propagate fish and place them in the waters of the United States. But it has been contended that this is one of the beneficent and paternal acts of the Government; but we submit, if the labors of the Fish Commissioner are not national, but local; if it was intended simply to dispense charity to a few seaboard States at the expense of the rest of the Union; if, in other words, it was not considered by the Congress a matter of commercial regulation for the Congress, why add those prohibitive words, "*any law, custom, or usage of any State to the contrary notwithstanding?*" No valid reason whatever can be assigned save that it was an assertion of the authority and power of Congress over the fisheries and fishing industries of the United States as a part of the great commerce of the country. And the Supreme Court have affirmed the constitutionality of the assertion of power in this act at least.

In *Manchester vs. Massachusetts* the Supreme Court say, in referring to section 4398, Revised Statutes, the section under discussion:

"This enactment may not improperly be construed as suggesting that as against a law of the State, the Fish Commissioner might not otherwise have the right to take fish in other places covered by the State law."

That is, the Fish Commissioner would be powerless to act without the authority of this statute; but if the act of Congress and State law come in conflict, as they would if the power of the Commissioner was even questioned, the act of Congress would be valid and extinguish the State statute.

It was argued before the committee that, if the power to control the fisheries was a regulation of commerce, it was vested exclusively in the Congress, and any enactments of the State upon the same subject were, *ipso facto*, void and unconstitutional; in other words, that the power to regulate commerce is exclusive.

It can not be doubted that over some subjects of commerce Congressional control is exclusive by reason of their peculiar nature, which would of itself preclude any action by the States, and also in some cases by reason of prohibition having been placed upon the exercise of such power by the States; but that there is a coördinate power over certain branches of commerce existent in the several States (and the fisheries one of them) until Congress exerts its controlling power over them is, we believe, a well-settled principle of Constitutional law.

Mr. Justice Miller, in his able work on the Constitution, recently published, thus defines the status of these coördinate powers of the State:

“There is one other question connected with this topic (referring to the regulation of commerce) which has been much mooted in the Supreme Court, and that is whether there may not exist in the States a coördinate power to regulate commerce of certain kinds in the absence of any action by Congress on the subject. It has been a vexed question in the court whether there is any such limited field of state legislation or for State legislative power in regard to any subject which can be fairly called a regulation of commerce; but I think that it is now the established law that there is a class of subjects having the elements of commerce, both foreign and domestic and interstate, which may be acted on, and in regard to which rules may be prescribed by the States as long as Congress does not choose to occupy the field and pass laws upon the same subject.” (Miller on the Constitution, p. 453.)

In support of this position he cites numerous authorities showing the controlling power of Congress over the acting power of the States. This principle applies directly to the jurisdiction of the United States over the navigable waters of the country as for regulating other subjects of commerce as navigation. That the doctrine, however, attaches to the waters as an incident of commerce, is clearly shown by Mr. Chief-Justice Marshall in the case of *Wilson vs. Marsh Company*, 2 Peters, 250, which was a case involving the right of a State to authorize the construction of a dam across a navigable stream, wholly within the State of Delaware:

“If Congress has passed any act which bore upon the case, any act in execution of the power to regulate commerce, the object of which *was to control State legislation over these small navigable creeks* into which the tide flows and which abound throughout the lower country of the Middle and Southern States, we should not have in saying that a State law coming in contact with such act would be void; but Congress has passed no such act.”

And in direct line with these cases are the following: *Gibbons vs. Ogden* (9 Wheat., 1); *Gelman vs. Phila.* (3 Wall., 713); *Crandall vs. Nevada* (6 Wall., 35); *Pound vs. Twick* (95 U. S. R., 459); *Packet Co. vs. Callettsburg* (105 U. S. R., 559).

And in *Cooley vs. Board of Wardens* (12 Howard, 299), which was a case involving the right of the State of Pennsylvania to regulate pilots and pilotage, it was argued that this was a regulation of commerce and, therefore, unconstitutional. The court, in the opinion filed, after laying it down as a fact that the subject of pilots and pilotage is a commercial regulation under the commerce clause, use this language:

“The grant of commercial power to Congress does not contain any terms which expressly exclude the States from exercising an authority over its subject matter.

“If they are excluded it must be because the nature of the power thus granted to Congress requires that a similar authority should not exist in the States.

"If it were conceded on the one side that the nature of this power, like that to legislate for the District of Columbia, is absolutely and totally repugnant to the existence of a similar power in the States, probably no one would deny that the grant of the power to Congress as effectually and perfectly excludes the States from all future legislation upon the subject as if express words had been used to exclude them, and on the other hand, if it were admitted that the existence of this power in Congress, like the power of taxation, is compatible with the existence of a similar power in the States, then it would be in conformity with the contemporary exposition of the Constitution (Federalist, No. 32) and with the judicial construction given by the court from time to time, after the most deliberate consideration, to hold that the mere grant of such a power to Congress did not imply a prohibition to the States to exercise the same power, that it is not the mere existence of such a power, *but its exercise by Congress*, which may be incompatible with the exercise of the same powers by the States, and that the States may legislate in the absence of Congressional regulations." (Sturgis *vs.* Crowninshield, 4 Wheat. 193; Moore *vs.* Houston; 5 Wheat., 1.)

While these cases all show conclusively the existence of this concurrent power over commerce in the States, in the absence of Congressional action, there is one that establishes the status of the fisheries as one of the subjects over which this coördinate power exists.

In *Manchester vs. Massachusetts* (139 U.S.R. 240, 1890), the court say:

"The pertinent observation may be made that, as Congress does not assert, by affirmative legislation, the right to control the pilots in the bays, inlets, rivers, harbors, and ports of the United States, it leaves the regulation of that matter to the States. (Cooley *vs.* Board of Wardens, 12 Howard, 299.)

"So that, if it does not assert by affirmative legislation its right or will to assume the control of menhaden fisheries in such bays, the right to control such fisheries must remain with the State which contains such bays. We do not consider the question whether or not Congress should have the right to control the menhaden fisheries which the State of Massachusetts assumes to control, but we mean to say only that, as the right of control exists in the State, in the absence of the affirmative action of Congress taking such control, the fact that Congress has never assumed control is persuasive evidence that the right to control them still remains with the State."

Could anything be plainer than the meaning of these sentences?

No act of Congress being in existence relating to the menhaden fisheries, the supremacy of the law of Massachusetts was maintained, but it nowhere appears that there is an exclusive power of legislation upon this subject vested in the respective States.

If human language conveys any evidence of what goes on in the mind of man, nothing can be plainer than the intimation of the court that this legislation is constitutional and that it is within the power of Congress to enact such a law, and therefore control State legislation upon the subject.

And so thought the Committee on Foreign Relations of the Forty-ninth Congress:

"The treaty of 1783 diminished and impaired, and was intended to diminish and impair, British sovereignty over the remaining British colonies of North America. *The United States had conquered full and complete dominion over the right of fishing in the jurisdictional waters of each of the thirteen United States*; but the British did not emerge from

the negotiations of the treaty of peace with similar dominion over the fisheries on the shores and coasts of the thirteen recognized States. British fishermen can not fish on the coast of Massachusetts, but American fishermen can fish on certain shores on coasts of the Dominion of Canada and of Newfoundland. Apart from fishing and the incidents of fishing it is conceded that the British Government has exclusive control, as against the United States, of the customary and usual rights of navigation in the jurisdictional waters of the British colonies.

"The Commonwealth of Massachusetts may control the right and liberty of fishing on her coast as against any other than the Government of Washington, but the right of navigation of the jurisdictional waters of Massachusetts is always subject to the control of the United States." (Forty-ninth Congress, second session, House Report No. 3648.)

Since, then, the power to regulate the fisheries is vested in the Congress as a regulation of commerce, and exists as a coördinate power with the States until exercised by Congress, it becomes important to ascertain how far it has been exercised by the General Government, and what, if any, has been the extent of the power actually exercised.

There is no doubt that the commercial jurisdiction of the Congress extends to all navigable waters within the United States for all purposes within the scope of that power. To what extent and into what waters has the Government applied this power over commerce in its relation to the fisheries?

(1) We have shown in the early days, prior to the Constitution, the right extended to all "bays, coasts, roads," etc.

(2) We have further shown that under the act of 1793 the fisheries, as a part of navigation, were really coequal with that branch of commerce.

(3) We have also shown that in the case of the Fish Commissioner it was carried to its utmost limit and made coextensive with the widest jurisdiction of the United States, applying to all the waters of the Atlantic coast and lakes.

It now remains to show how extensive the power really is by an examination of the grants of the Government to foreigners; that is to say, to the subjects of Great Britain, by the treaties of 1854 and 1871. A great deal of loose talk has been indulged in upon this subject of the treaty-making powers of the President and the Senate, especially in reference to the above-mentioned treaties, which is calculated to mislead.

It is a well-settled principle of international law that all Governments entering into treaties are presumed to have power so to do, or rather the *jus disponendi* of the subject-matter, because they are bound in good faith to carry out all the obligations of such treaties or suffer the consequences.

In order, therefore, to place the treaties of 1854 and 1871 outside the usual category of valid treaties and thereby sustain the contentions of the opponents of this bill, you must declare that the President and the Senate have violated their official oaths and entered into a treaty in defiance of the powers granted by the Constitution.

It was argued that the treaty-making authority has power to do any thing and everything it wills, regardless of the Constitution; that it has the authority to "barter in exchange with foreign nations for such equivalent as he thinks proper, rights which as between the States and national Government are not only matters of State ownership, but such that the national Government would concede to be so." This may be

good law, but it decidedly lacks authority. We submit to you that, while the treaty-making branch of Government has power to conclude treaties with foreign states, it can not make a treaty which exercises any unusual power or grants any rights not authorized by the Constitution; in other words, "a treaty can not change the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our Government." (*Cherokee Tobacco vs. United States*, 11 Wall., 616.)

"The treaty-making power is limited by all the provisions of the Constitution, which inhibit certain acts from being done by the Government.

"It is also limited by such provisions of the Constitution as direct acts to be done in a particular way.

"It can enter into no stipulation which is inconsistent with the nature and structure of the Government." (Calhoun's Discourse on Government, 1 Works, 201.)

In speaking of the powers of the treaty-making branch of the Government, Thomas Jefferson, in the *Manual Parliamentary, Practice Digest*, Fifty-first Congress, page 186, says:

"The Constitution must have meant to except out of these the rights reserved to the States, for surely the President and Senate can not do by treaty what the whole Government is interdicted from doing in any way."

President Woolsey lays it down as a settled principle of law that "if the power of a sovereign or of a government is limited by a ground law written or unwritten, a treaty can not override that constitution.

"An interesting query here arises whether the treaty-making power in a federative union like the United States can alienate the domain of one of the States without its consent. Our Government, when the northeastern boundary was in dispute, declared that it had no power to dispose of territory claimed by the State of Maine. Only in extreme cases where the treaty-making power is called upon to accept the fact of conquest or to save the whole body from ruin, by surrendering a part, could such an exercise of power be justified." (Woolsey on International Law, Ed. 1891, p. 160.)

The Supreme Court has said, in *Chae Chen Ping vs. The United States* (130 U. S. R., 581):

"Treaties are of no greater legal obligation than acts of Congress. By the Constitution, laws made in pursuance thereof and treaties made under the authority of the United States are both declared to be the supreme law of the land, and no paramount authority is given to one over the other."

So that if the President and Senate have entered into a treaty the presumption must be that it was done advisedly and within the scope of their powers, reasonably construed, and all its stipulations, therefore, must be deemed constitutional, at least until some question has been raised and decided otherwise somewhere and by somebody having authority, because it must be concluded that all adverse rights, if any existed, had been carefully considered and ascertained. A treaty constitutionally concluded and ratified is the supreme law of the land, and abrogates whatever law of any one of the States may be inconsistent therewith. (Constitution, Article 6.)

If Jefferson's proposition be true, that the President and Senate have no greater constitutional power than the whole legislative branch of the Government, it must follow that the Congress has equal power, at least, with the President and Senate as the treaty-making power;

that is to say, if the President and Senate can, by a treaty in behalf of citizens of a foreign power, grant certain privileges to them peculiarly national, it would be a denial of the most vital and cardinal principle of the Constitution—equality under the law—as well as the express decision of the Supreme Court in the Cherokee Tobacco Case, to say that Congress had not the power to make the same or an equal grant concerning the same subject-matter to citizens of the United States, and yet that assertion is maintained practically and in terms by those opposed to this legislation.

In this light it is a demonstration that the treaties of 1854 and 1871, taken in connection with those of 1783 and 1818, determine beyond a reasonable doubt the power of the Government to regulate the fisheries in the waters described therein.

The treaty of 1783 continued to the people of the United States certain fishing rights, some of which were later renounced forever by this Government in the treaty of 1818. After years of contention and diplomatic sparring over the meaning of the convention of 1818, the whole fishery dispute was finally boiled down into Articles I and XI of the treaty of 1854, and after its expiration into Articles XVIII and XIX of the treaty of 1871. Article XVIII of the treaty of 1871 provides as follows: "It is agreed by the high contracting parties that the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shellfish, on the seacoasts and shores, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, and Prince Edwards Island and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the coasts and shores of those colonies and of the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish, provided in so doing they do not interfere with the rights of private property or British fishermen in the peaceful use of any part of the said coast in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for British fishermen."

And Article XIX of the same treaty provides as follows:

"It is agreed by the high contracting parties that British subjects shall have, in common with the citizens of the United States, the liberty to take fish of every kind, except shellfish, on the eastern seacoast and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbors, and creeks of the said seacoasts and shores of the United States and of the islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid for the purpose of drying their nets and curing their fish, provided in so doing they do not interfere with the rights of private property or with the fishermen of the United States in the peaceable use of any part of the said coast in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for the fishermen of the United States." (Treaties and Conventions, U. S., p. 486, 1889.)

The provisions relating to the fisheries are so nearly identical in these

two treaties that we have only quoted those of 1871, the only difference between that of 1854 and 1871 being that British fishermen were allowed to fish everywhere north of thirty-sixth parallel in the treaty of 1854, and only north of thirty-ninth parallel in that of 1871. So that, practically, from 1854 to 1885, the date of the abrogation of the treaty of 1871, British fishermen had the right to fish "in all the bays," etc., "of the United States without being restricted to any distance from the shore." The opponents of this bill argued before the committee that the words "in common with the citizens of the United States" limited the privileges granted by these treaties to British subjects to those enjoyed in the waters therein described by the citizens of the United States. In other words, under the treaties of 1854 and 1871 a British subject would have no greater liberty of taking or catching menhaden or mackerel in the "bays, harbors, and creeks" of the State of Maine than a citizen of Connecticut or New York would have had under the adverse legislation of that State, which denied any liberty at all so to fish—practically total exclusion therefrom.

If this construction of those treaties could be adopted it could reconcile them very neatly with the contention of those who oppose the power of Congress over the fisheries, but fortunately we have not been left to speculate upon the exact meaning and scope of the privileges granted and obtained by those treaties. It is curious that both the attorney-generals of Maine and Massachusetts should have been led into adopting such a construction of these treaties, when the most casual examination of the subject would have shown them that they alone of Americans had formally adopted the British view, which made the exercise of the treaty privileges subject to the provincial legislation of Canadian colonies, as well as to that of the several States, from which position, however, even Great Britain receded and paid heavy indemnity for having attempted to put it into execution, as we shall see hereafter.

Our citizens, under those treaties of 1854 and 1871, demanded and obtained the right to fish anywhere and everywhere in the waters described, and it would be a contradiction of fact to give words one meaning, as applied to the citizens of the United States, and a contrary import when applied to the citizens of Great Britain.

If such a construction were upheld it would compel subjects of that country to take notice of the various State laws and act according to their provisions, which is not only a legal absurdity, but positively contrary to the Constitution. No State can be a party to a treaty stipulation in any way.

The treaty of 1871, in all its bearings, has probably been more fully and ably discussed by both parties thereto than any other treaty ever entered into by them, except, possibly, that of 1783. It will be observed that the words used in Articles XVIII and XIX, defining that the limitations of the privilege of fishing are exactly the same, so that the meaning must be the same in both cases.

Whatever privileges we obtain by those treaties in British waters, equal privileges were obtained by Great Britain in corresponding waters on our coast.

It was agreed in the treaty of 1871 that if any difference in value between these respective grants should be found to exist they should be paid for in money.

To adjust a claim of Great Britain that such difference did exist the Halifax Commission was called into existence in 1877, and the

whole subject of these two articles (XVIII and XIX) was thoroughly discussed.

There was a unanimous consensus of opinion of both counsel for the United States and Great Britain that the rights granted were found in the words of the treaty and were coequal and coextensive with the waters described, and furthermore, they were absolutely independent of any local restrictions, being limited only by the exceptions and reservations of the treaty itself.

Another fact must be borne in mind. "Where a treaty admits of two constructions, one restrictive as to the rights granted and the other liberal, the latter is preferred. Such is the settled rule of this Court." (Hauenstein, v. Lynham, 100 U. S., 483.)

Applying that rule of the Supreme Court to this case it raises a strong presumption in favor of the broad right at the outset; which presumption is amply confirmed by all the authorities. Wharton, in his International Law Digest, Volume III, page 61, referring to this very treaty of 1871 and the Halifax Commission, says:

"To appeals of this class, based either upon treaty or the law of nations, no municipal statute, Federal, State, or provincial, can be set up as a defense, and this has been repeatedly admitted in the United States, in respect to international duties and to treaties executed by the President and Senate within the range of their constitutional power."

This principle is conceded by Great Britain in respect to Canadian statutes and adjudications in this very relation, and Secretary of State Evarts, in a letter to Minister Welsh, February 17, 1879, says:

"This Government conceives that the fishery rights of the United States, conceded by the Treaty of Washington, are to be exercised wholly free from the restraints and regulations of the statutes of Newfoundland."

If the limitation sought to be placed upon this right represents the American idea of this treaty as it relates to our waters, we are in the position of claiming the privilege in British waters, discharged of all local statutory restraints and granting a privilege fettered by most stringent State prohibitions, so that if the Government of the United States has no control over the fisheries in its waters, as provided in Article XIX of the treaty of 1871, it granted a right the enjoyment of which, within the terms of the grant, it was powerless to bestow or enforce, and thereby obtained by fraud a concession the use of which it has not been slow to assert—a position which, if true, would cover us with dishonor.

If a question had been raised as to the exercise of the right by Great Britain thus acquired, such a contention as this would have been almost too ridiculous for serious discussion. Let us see exactly what was granted. In Secretary Evarts's review of the Halifax Commission award, he defines what the treaty meant at the time of its negotiation and to those who negotiated it.

The result of the conferences is shown in Articles 18 to 25 of the treaty and disposed of the matter as follows:

"First. A participation in the inshore fisheries of the Gulf of St. Lawrence is conceded to the inhabitants of the United States for a term of years, to wit, for twelve years from the commencement of the right.

"Second. A participation in the *inshore fisheries of the United States*, north of 39th parallel of north latitude, is conceded to subjects of Great Britain for the same term of years." (Halifax Commission, p. 8.)

At page 11 the Secretary says:

“First. It will appear indisputable upon the proofs that the practical measure of the concession to the United States of Article 18 was the grant of a participation by our citizens in the inshore fisheries of the Gulf of St. Lawrence, that is to say, of a free and equal right to take part in the fisheries within the three-mile line instead of being excluded therefrom as under the convention of 1818.”

On the part of Great Britain it was argued and agreed by counsel that—

“Liberty to prosecute freely the sea-fisheries on the coasts and shores and in the bays, harbors and creeks of Canada is in itself a very valuable concession to United States citizens” (p. 88). Again, it is argued by the counsel for the United States “that the privileges granted to British subjects by Article XIX of the treaty of Washington are the *same right* of fishing and landing for purposes connected with fishing in United States waters, north of the 39th parallel of north latitude, as are granted to United States citizens in British North American waters” (p. 97).

Again, on the part of the United States it was admitted that “this right, as applied to citizens of the United States, was the privilege to fish on the seacoasts and shores and in the bays, harbors, and creeks of Quebec, Nova Scotia, New Brunswick, Prince Edward Island, and the adjacent islands, without being restricted to any distance from the shore” (p. 119), and in construing the rights of British subjects counsel for our Government agrees that “by Article XIX British subjects acquire for the same term of years identically the same privileges and upon the same restriction of landing to cure fish and dry nets, and of fishing on the eastern coasts and shores of the United States north of the 39th parallel of north latitude, and on the shores of the adjacent islands, and in the bays, harbors, and creeks of said sea coasts and shores, without being restricted to any distance from the shore, as by Article XVIII has been accorded to United States fishermen in regard to the Atlantic coast of British North America, *mutatis mutandis*, the privileges conceded by each side to the other are of the same character, and expressed in precisely the same language” (pp. 121, 122).

That being the case, a simple reference to the map found at page 100, volume 1, Halifax Commission, will convince anyone that the liberty to fish in American waters granted to British subjects included in its scope all the bays, harbors, etc., from which the States of Maine, Massachusetts, and Virginia to-day exclude their fellow-countrymen of other States.

It is a novel proposition, indeed, that the United States through the treaty-making power can permit a Briton to take menhaden and mackerel in Buzzards Bay, or anywhere else, and that Congress is powerless when it attempts to give, by appropriate legislation, that same right to an American citizen, and yet that is the argument you must indorse to refuse to enact this legislation.

This Government is committed to the former proposition, as will clearly appear from the following admission on its behalf:

“It is necessary now to consider the specific benefits which the treaty directs the commission to regard in its comparison and adjustment of equivalents.

“First. What do British subjects gain by admission to the fishing grounds of the United States down to thirty-ninth parallel of north latitude?

“All description of fish found in British waters also abound along

this portion of the coast of the United States. They are nearly as extensive territorially and equally valuable.

"If the provincial fishermen invested the same amount of capital in the business and exerted equal enterprise industry, and skill, they would find the American waters fully as valuable to them as theirs are to the fishermen of the United States.

"The menhaden fishery has within ten years grown into an immense business. Formerly they were taken only for bait and were either ground in hand mills for mackerel or used in what is called 'slivers' for codfish bait. There is now a large fleet of steamers and sailing vessels engaged in this fishery. Large factories have been erected on shore for extracting the oil. As the fish are not valuable until they are fat, which is in August and September, they are not much taken in their spawning time; and they will not therefore be exterminated. They are caught solely with seines, near the shore, their food being a kind of marine seed which floats upon the waters; consequently, they will not take the hook. This fishery is the most profitable of all the fisheries, the oil being used for tanning and currying extensively at home and being exported in large quantities.

"The refuse of the fish, after being pressed, is used for manufacturing guano or phosphate and is very valuable as a fertilizer. This fishery is purely an American fishery, no menhaden ever being found north of the coast of Maine. It is entirely an inshore fishery, the fish being taken within 2 miles of the shore.

"The United States inshore fisheries for mackerel, in quality, quantity, and in value are unsurpassed by any in the world. They are within four hours' sail of the American market, and many of the mackerel are sold fresh at a larger price than when salted and packed. The vessels fitted with mackerel seines can use the same means of facilities for taking menhaden, so that both fisheries can be pursued together. And they combine advantages compared with which the Dominion fisheries are uncertain, poor in quality, and vastly less in quantity.

"The Canadian fisheries are a long voyage from any market whatever, and involve far more exposure to loss of vessels and life. *These fisheries along the shores of the United States are now open to the competition of the cheap-built vessels, cheap-fed crew, and the poorly paid labor of the Dominion fishermen, who pay trifling taxes, and live, both on board of their vessels and at home, at less than one-half of the expense of American fishermen.* It is only from the lack of enterprise, capital, and ability that the Dominion fishermen have failed to use them. But recently, hundreds of Dominion fishermen have learned their business at Gloucester and other American fishing towns and by shipping in American vessels. They have in United States waters to-day over thirty vessels equipped for seining which are sweeping the shores of New England." (Case of the United States before Halifax Commission, Vol. 1, p. 129.)

In the argument of Hon. Wm. H. Trescott on behalf of the United States he thus defines the limit of the treaty right:

"I come now to the questions which that treaty of 1871 raises, and they are simply here: What is the difference in value gained by us and the advantages gained by you; that is to say, what is the difference in value between the right to fish within the three-mile limit on the one side and the right to fish on the *United States shores on the other?*" (Vol. 2, Halifax Commission, p. 1642.)

And again he defines it:

"We now go further and maintain that if in this condition of the

mackerel fishery you can find any basis for such award, then the advantages offered to the subjects of Her Britannic Majesty by the United States in the same treaty are a complete offset. These advantages consist, first, *in the right to share the inshore fisheries of the United States*. It will not do to assert, as the British case does, that their modes for fishing for menhaden and other bait are, furthermore, such as to exclude strangers from participating in them without exceeding the terms of the treaty; and even without this difficulty it must be apparent that such extensive native enterprises would bar competition and suffice to insure the virtual exclusion of foreigners. (Page 29.)

"These as they stand are mere assertions unsupported by any proof. The treaty provision is the highest law of the land, and no local legislation can prevent the exercise of the privileges it confers. The competition of native enterprise is just what the United States fishermen meet in British waters; and that the native enterprise is more extensive on the United States shores only proves that there is an industry which better rewards the enterprise. It is, like all treaty privileges, one the use of which depends upon those who take it, and if, when given and taken in exchange, the parties taking do not choose to use it, this refusal can not deprive it of its value." (*Ibid.*, p. 1648.)

And Senator Edmunds, in a very able report to the Senate, states the situation:

"In 1854, however, the objects of British and Canadian desire were at last accomplished by the conclusion of the treaty of the 5th of June of that year, by which an extensive reciprocity, so called, of trade was agreed upon, and the right granted to the Americans to fish within the limits prohibited by the treaty of 1818 under a variety of restrictions and limitations, and a similar right granted to British fishermen in the waters of the United States north of latitude 36.

"Then came the treaty of 1871, devoted primarily to the Alabama claims, but which provided that for the period of ten years fishermen of the United States should have, in addition to their rights under the treaty of 1818, the right of British North American inshore fishing under certain limitations, etc.; and the United States agreed to the free admission of the British North American fishery products into our country, and it was also provided *that British fishermen might fish in American waters*, and that the balance of alleged advantage to the United States in these respects should be settled by a commission.

"The British Government paid an indemnity for an interference with our fishing vessels in respect with their being engaged in fishing in those waters contrary to the municipal statutes of Newfoundland.

"The United States is under no treaty obligation whatever in respect of Dominion fishing or any other vessels, other than those contained in the treaty of 1871, and all those, whatever they may be, *are strictly mutual*." (Ex. Doc. 109, Fiftieth Congress, first session, pp. 11, 12.)

The Committee on Foreign Relations of the Forty-sixth Congress, in a report upon the bill to withdraw certain parts of the treaty upon its expiration, says:

"From the terms of this article (XVIII), it will be seen that the liberty to take fish of *every kind, except shellfish*, is conceded to our people on the seacoasts and shores, as well as the bays, harbors, and creeks of the provinces. *No more comprehensive language can be used to give an undivided interest to the inhabitants of the United States, along and equal with those of Great Britain, in this adventurous and hazardous business.*

“Every interpretation of these rights in the Halifax Commission, and in the correspondence, including the ‘case’ made by Her Majesty’s Government, confirms the views of our administration that without such permission to fish on the ‘shore’ the practical use of the fisheries is impossible. Without such permission we paid for nothing. We caught back what we unwisely relinquished or failed to defend in 1818, and the delivery has been withheld.

“Without discussing the failure and lack of consideration paid for our fishery freedom, which, in treaties as in private contracts, unbinds the injured party, it will be conceded that, in addition to the five million five hundred thousand dollars paid in money, *equivalent rights were granted to the British inhabitants for fisheries on our coasts*; and, second, an exception of the provincial fish products from duties, giving to the Dominion an absolute free market for fish and fish oils in the United States.

“If it be said that the bill reported by the committee is a violation of the fishery clauses of the treaty, which allows free fish to come into the United States, it may be answered that the violent infraction of that treaty at Fortune Bay destroys the very object for which these immense considerations were granted and paid. Since it is not possible, except by diplomacy, to recover the \$5,500,000 paid to the British Government for the now valueless concession, *since we do not propose to take away the concession to the British inhabitants who desire to fish on our shores*, one thing remains to be done by this Congress which is entirely consistent with the international law and the decisions of our Supreme Court.” (House Report No. 1746, Forty-sixth Congress, second session.)

And Alexander Bliss, in review of the Halifax fishery award in 1878, says:

“No account is here taken of deductions to be made from the amount to be awarded to Great Britain by reason of the advantages accruing to the Canadian provinces from the corresponding privileges accorded to them under the treaty of fishing in our waters.

“It is true that Great Britain denies this privilege is valuable to them. But America asserts that it is; that the mackerel in some seasons seek in preference our shores, and that menhaden, the best bait for them, are to be caught exclusively off our coast. Whatever the intrinsic value of our fisheries, Great Britain contends, however, that to her subjects of the provinces they are of no use, because they have plenty of fishing nearer home.”

No advantages whatever could accrue, either to ourselves from fishing on the British inshore or to them from fishing in our inshore waters, if the construction put upon this treaty by the opponents of this legislation be correct, because the prohibitive legislation of the Canadian provinces, and the State of Maine particularly, would have shut the fishermen entirely out from the places where the best fishing was to be found.

As we have said, the words designating the limitations of the grant in the two articles are precisely the same, so that any reasoning applicable to one article is equally pertinent to the other. The “concessions are mutual.”

In compliance with a resolution of the House of Representatives in regard to the outrage upon American fishermen at Fortune Bay, Newfoundland, President Hayes transmitted to the House a message upon the subject, which included a report from the Secretary of State. Secretary Evarts, who made the report, it will be agreed, is one of the ablest

of our contemporary jurists and statesmen, and the clear reasoning by which he arrives at his conclusion of the nature of the rights granted and obtained by this treaty of 1871, and their absolute freedom from all statutes, provincial or State, which Great Britain finally accepted, and granted indemnity for damages inflicted by her citizens in attempting to enforce the opposite view, should be convincing to us.

We cite his argument at length:

"There are but two grounds upon which the subordination of the United States' freedom of the inshore fisheries to imperial or provincial legislation curtailing or burdening that freedom ever has been or in the nature of the case can be placed.

"The first is that of reserved general sovereignty within the three-mile limit, under the cover of which it is pretended there lurked in the concession of the freedom of this fishery to the United States, in common with Great Britain, the power of one party in the privilege of this common fishery to regulate the enjoyment of it by the other. The statement of this proposition confutes it.

"The United States would have acquired nothing by the right, if the concession was constantly subject to the will of Great Britain for its exercise and enjoyment. Accordingly, Lord Salisbury disclaims this pretension as ever having been held by the British Government as a reserved power capable of exercise by any regulation subsequent to the date of the treaty of Washington. But, manifestly, antecedent regulations, as having force subsequent to the treaty, can not be sustained upon the ground of sovereignty over the treaty concession by any better reason than the new legislation of that quality and effect.

"If the treaty predominates over subsequent provincial legislation, encroaching upon the treaty concession, by stronger reason it supplants previous provincial legislation subversive or restrictive of the treaty concession. If such a previous legislation persists after the treaty comes into operation, it must be because the treaty in terms or by just interpretation accepts this previous legislation as a part of itself. But this is the predominance of the treaty and not of the legislation, which thenceforth owes its vigor to the stipulations of the treaty by the United States which adopts and confirms the provincial legislation in force at its date.

"This is the substance of the British contention, and, in the failure of the doctrine of reserved sovereignty, is the only alternative basis of the present proposition of the British Government.

"The subject thus brought into dispute at this late date in the progress of the fishery negotiations between the two countries is simply what the fishery in the provincial waters, which the British Government had at its disposal and which we acquired at its hand, as a matter of property and beneficial enjoyment, really was.

"That the British proprietorship in and dominion over this inshore fishery was perfect, absolute, and without incumbrance or limitations, and that this was the subject concerning which the negotiations were occupied, and by and to which the treaty equivalents were to be measured and applied, was certainly never doubted by the negotiators of this treaty on the part of the United States or of Great Britain. Whatever this fishery was in its natural extent and value, in its geographical area, and its multitude and variety of fish products, that was the subject which Great Britain possessed the *jus disponendi*, and that the subject of which the United States proposed to acquire an undivided share. The proportion of this fishery which Great Britain was to part with and the United States was to appropriate does not affect

the question of what the entire property was and understood to be. Whatever the United States would have acquired had Great Britain parted with the whole fishery, the subject partitioned between them was this entirety, no matter what the shares in which it was to be enjoyed might be.

"It is equally clear that the negotiators on both sides assumed that Great Britain was dealing with this subject as sole owner, and that it had impaired neither its title nor its possession by any previous grant of incumbrance. Whatever right and enjoyment then, by proprietorship and dominion, Great Britain, in its political sovereignty, could impart to 'the subjects of her Britannic Majesty,' that right and enjoyment Great Britain could impart 'to the inhabitants of the United States,' this being the subject of the grant and this the title and possession of the grantor, which is the treaty description of the estate, right, and privilege granted to the United States for the enjoyment of its citizens?

"The text of the fishery articles of the treaty of Washington shows that there was no limitation whatever upon the grant, except that the estate, right, and privilege granted were to endure but for a term of years, and were to be enjoyed by the United States not exclusively, but in common with Great Britain. There was, to be sure, a restriction imposed upon both countries which excluded both equally from extending the enjoyment of either's share of the common fishery beyond the 'inhabitants of the United States' on the one side and 'her Britannic Majesty's subjects' on the other, thus disabling either Government from impairing the share of the other by introducing foreign fishermen into the common fishery. But this feature in the grant has no significance in the measure of the concession as now disputed by Great Britain and contended for by the United States.

"The British contention imputes to the phrase of the treaty, in common with the subjects of Her Britannic Majesty, not only its manifest effect of excluding any possible conclusion that the privilege conceded to the United States was exclusive, but the further effect of measuring the subject of the grant—that is, the fishery itself—as it was then, at the very date of the treaty, regulated by the various laws of the maritime provinces.

"For this interpolation there seems no justification either in reason or in the history of the negotiation. There is not the least evidence that it was presented to the mind of either of the high contracting parties to the treaty that the subject of the fishery to be partitioned between them was any less than such as it was in its natural dimensions and quality and such as it was as a subject of human control at the unlimited disposal of British sovereignty. What these provincial laws were no one inquired and no one disclosed. That the fishery of our seagoing fishermen were to share in was a fishery regulated by and for the local population fishing from the shore no one conceived. That the title of Great Britain should be examined, or warranty against adverse title and possession or against encumbrances exacted, would have seemed both foolish and offensive to the high joint commission which negotiated this treaty.

"To the apprehension of all, the map and the statistics of the catch showed what the fishery was in extent and value, and the dominion of Great Britain over the subject measured the security of the right which we were to acquire.

"The proposition of Lord Salisbury reduces the grant of the fishery from the dimensions of the fishery as Great Britain had power to con-

vey it, and by its mere natural description would convey it, to the fishery as it had been trimmed and curtailed by local legislation and was to be regulated by local administration.

"He reduces our enjoyment from a freedom of the fishery, such as the plenary political power of Great Britain could impart to its subjects and could share with the United States, to be enjoyed by their inhabitants, to the use of the fishing methods and seasons of the provincial coast population as their faculties and occasions had arranged them; and this interpretation of the subject of the grant by which one party parted with and the other acquired nothing of value, turns upon the phrase of the treaty which defines the estate conveyed as not exclusive, but to be held in common.

"Fortunately, the closing transaction between the two Governments, by which the fishery concession to the United States was to be measured and valued, and compensation on our part therefor to be adjusted according to the measure and value of the provincial fishery, not in the abstract, but as open to our fisherman, furnished an opportunity to take the estimate both of the provincial and British Governments of the extent and comprehension of the subject of the grant. This transaction antedates the present disputation and brings the two Governments together in a computation before the Halifax Commission of the nature, extent, and benefit of the inshore provincial fishery." (Ex. Doc. H. R. No. 84, Forty-sixth Congress, second session, p. 7, *et seq.*)

And in addition the Supreme Court in *Manchester vs. Massachusetts*, already cited, confirm the position already proven.

"But there is no occasion to consider the power of the United States to regulate or control either by treaty or legislation the fisheries in these waters (referring to Buzzards Bay, an inland bay of the State of Massachusetts), because there is no existing treaties or acts of Congress which relate to the menhaden fisheries within such a bay.

"The rights granted to British subjects by the treaties of June 5, 1854, and May 8, 1871, *to take fish upon the shores of the United States* had expired before the Massachusetts statute of 1886 was passed."

Every opinion which we have found upon the subject of this treaty grant of 1871 has been the same that it entitled British fishermen to fish in all the "bays, harbors, creeks," etc., on the coast of the United States without being restricted to any distance from the shore waters to which hostile State legislation denied admission to citizens of the United States.

In the face of all this it can not be logically contended that the United States has no control over the fisheries within the limits defined by these treaties, because the power has already been exerted by statute in behalf of an officer of Government, the Fish Commissioner, and by treaty in behalf of citizens of Great Britain, and gone unchallenged.

There can be no question that the control remains with the States until exercised by Congress, and that Congress has only asserted its power as far as just described, but the fact that no legislation has ever been taken to grant to citizens of the United States the menhaden and mackerel fisheries is no argument for its nonexistence any more than the nonintervention of Congress in the matter of pilots argues that control of that subject does not exist in the Congress. This brings us to the consideration of the arguments that have been considered by the opponents of this bill as controlling the question as far as the power of Congress is concerned.

No matter, they say, if the right of fishing, common to all the inhabitants of the United States, did exist at the Revolution.

No matter if this right was in the nature of a servitude upon the ownership of the soil under the waters in favor of the people of the United States. No matter if this servitude or right of fishing did pass as a subject of commercial regulation under the Constitution.

No matter if Congress has exercised control over the fisheries under this grant, and no matter if the treaty-making power did grant to British subjects absolute freedom to fish in the so-called territorial waters of the States, there are several cases which have been decided by the Supreme Court which overrule all these and establish the fact that all control over these fisheries is vested in the several States. These controlling and leading cases, so called, are four in number. There are others in which incidental mention is made of this subject of fishing, but it will suffice to discuss only these four. They are: *Martin v. Waddell* (16 Peters, 367); *Smith v. Maryland* (18 Howard, 71); *McCready v. Virginia* (94 U. S. R., 391); *Manchester v. Massachusetts* (139 U. S. R., 240).

Before we analyze these cases, let it be remembered that the bill before you deals entirely with menhaden and mackerel, "the free swimming fish in the seas going, we know not how far off, and showing themselves here to-day and there to-morrow, schooling upon the face of the sea, and then going out of sight, having no habitation and being nobody's property." (Halifax Commission, Vol. XI, p. 1671.)

It is a singular fact that the question, so far as it relates to this kind of fishing, has never been raised in the Supreme Court at all, under a statute of the United States, simply because none has ever been enacted, so that while the cases referred to may have a limited application to the question of the power of Congress to legislate upon the subject of fisheries, they can not be said to control or limit that power in the least, for the plain reason that the power of Congress is not in any of them called in question, nor was it an issue before the court. In addition to this at least three of the four cases decided questions concerning the taking of or dredging for *oysters* and not for the catching of free swimming fish. We submit that there is a wide difference, both in reason and authority, between principles of law applicable to shellfish and swimming fish.

The determination of this question will eliminate from this discussion an element of uncertainty as to the application of the principle of the decisions referred to, because if it can be shown that there is authoritative distinction between the two in point of the fact as well as under the decisions the relations between shell or fixed fish and sea, or floating fish become established thereby dissipating the confusion caused by considering them as in the same class. "An oyster is a marine mollusk, usually found adhering to rocks or other fixed objects in shallow water or along the sea coast, or in brackish water in the mouths of rivers."

It is peculiarly a bottom growth; it neither swims nor has the power of motion. It is the only living product of the sea in which man can have a fixed right of property. As Chief Justice Waite said in *McCready's* case, "The planting of oysters is not different from the planting of corn upon dry land."

Mr. Justice Thompson said, in *Martin v. Waddell*, (16 Peters, 421):

"For if it had been understood that the fisheries included oystereries the enacting clause and the proviso would present a glaring inconsis-

tency. The enacting clause authorizes the setting apart the oystery to exclusive private use, when by the proviso no obstruction is to be made to the fisheries. So that if an oystery is a fishery the owner is deprived of the exclusive use of it. The act seems to be founded upon a distinction clearly held up in many cases to be found in the books between an oystery and a fishery in the common use of the term, the one applying to *the use of land under the water* which is peculiarly adapted to the growing of oysters, and to be used for that purpose in the cultivation of oysters as other lands are used for the purpose to which they are particularly adapted. Whereas a fishery, in common acceptation, has reference to the use of the waters for floating fish; and this is a very obvious and natural distinction."

Continuing, the following language is used:

"With respect, however, to the right of fishery, there is, in my judgment, a marked distinction both in reason and authority between the right in relation to floating fish and the right of dredging for oysters.

"The latter is entirely local, and connected with the soil. There are natural beds of oysters, but in other places there is peculiar soil adapted to the growing of oysters. They are planted and cultivated by the hand of man like other productions of the earth."

And President Woolsey says:

"The right to prohibit foreign fishermen from catching shellfish seems to have reasons of its own. They are caught near the shore, within tide-water, and need laws for their protection at certain season. They may be cultivated by *private persons on their own lands*; they need in short a police, which is not required for fish in the proper sense of the term." (Note to Woolsey's, *International Law*, p. 74.)

The treaties of 1854 and 1871 both define the difference by excepting shellfish from other fishing provisions, or at least if they do not define the difference, they indicate strongly that while, the United States could control "fisheries," they could not grant rights to take shellfish. John Quincy Adams says:

"The soil and its products may belong to one person and the fishery to another." *Annals Fifteenth Congress*, second session, page 1466.)

Hon. Richard H. Dana, jr., in his argument before the Halifax, defines the difference.

"I speak of the deep sea fishermen following the free swimming fish through the sea, not of the *crustaceous animals* or any of those that connect themselves with the soil, under the sea or adjacent to the sea, nor do I speak of any fishing which requires *possession of the land*." (*Halifax Commission*, Vol. II, page 1654.)

And again he says:

"I do not raise any question respecting those fish that adhere to the soil or to the ground under the sea." (Page 1665.)

In *Manchester v. Massachusetts* (139 U. S. R., 240), the distinction is clearly indicated in the following language: "If there be a liberty of fishing for swimming fish in the navigable waters of the United States common to the inhabitants," etc. There was no need of inserting the words "for swimming fish" if the universal term included all. It was used designedly to distinguish this case from other cases, where the question involved related to shellfish, and to make the subsequent language used apply to swimming fish and not to shellfish.

In the case of *Rogers v. Allen* (*Campbell Reporter*, 309), Heath, Justice, said:

"A right of fishery and a right of free warren are not at all like each other. Part of a fishery may be abandoned and another part of more

value may be preserved. The public may be entitled to catch floating fish in the river Brunham, but it by no means follows that they are justified in dredging for oysters, which may still remain private property."

It has been repeatedly declared that "a fishery, in the legal parlance of the United States and Great Britain, primarily denotes one of that class of objects known as things incorporeal." (15 Opinions Attorney-Generals, bb. 1, or, in the language of Vattel: "*Jus meræ facultatis*.")

It would be a manifest incongruity of construction to apply those terms to shellfish, attaching to the soil as they do, and following the analogy of growing corn as was said in *McCready v. Virginia*, and *Martin v. Waddell*.

They are corporeal, capable of location and possession before taken. You plant the seed and reap the harvest where the seed are sown, while in the other case, the harvest is gathered from the depths of the waters, far and near, anywhere as uncertain chance or the elements permit. It would seem, therefore, conclusive that there is no analogy between the fixed shellfish of the shores and the bottoms and the free swimming fish (menhaden and mackerel) of the sea, nor can there be any similarity or unity of legislation or decision that would bind them together as one subject.

A moment's consideration by any thoughtful person would show that they are totally and irreconcilably dissimilar in every essential particular—construction, habits, modes of growth, and methods employed in their capture. In fact, an oystery is one thing and a fishery an entirely different affair. Bearing this in mind, we can consider these cases more intelligently and carefully.

We submit that isolated sentences, taken at random from Supreme Court opinions disconnected with the subject-matter to which they refer, do not represent the scope of the law defined by the decision. Collateral reference to adjudicated cases must follow the two rules governing such references.

(1) The subject-matter and the facts of the cases must be so nearly identical that the court could have had the other in mind when applying the law to the one.

(2) The whole opinion must be construed in reference to the particular state of facts to which it applies.

With these principles in view, we can ascertain the relation of these cases to the question before you.

The first case was that of *Martin v. Waddell* (16 Peters, 367), decided in 1842. The opinion, which was delivered by Mr. Chief Justice Taney, thus sets forth the cause of action and the whole subject that was decided in that case. At page 407 he says:

"The questions before us arise upon an action of ejectment instituted by the defendant in error, to recover one hundred acres of land covered with water situated in the township of Perth Amboy, in the State of New Jersey * * * and it appears that the principal matter in dispute, is the right to the oyster fishery in the public rivers and bays of east New Jersey."

It will not be necessary to do more in this connection than to cite the few sentences from an opinion on this question, which are considered as ruling this question before you.

"For when the Revolution took place, the people of each State became themselves sovereign, and in that character hold the absolute right to all their navigable waters and the soils under them, for their own com-

mon use, subject only to the rights since surrendered by the Constitution to the General Government."

So that, construing these words in reference to the only subject of sovereignty in the case, *one hundred acres of land within the territory of New Jersey*, and with the further observation that the words "subject only to the rights since surrendered by the Constitution," could scarcely apply to any land in New Jersey, as there is no cession of territory within the States by the Constitution to the General Government, and must therefore apply to the "navigable waters" referred to, it can hardly be considered such a decision of the question whether Congress has the power to regulate the coast fisheries under the Constitution as would preclude the national legislature from acting if it saw fit so to do. Such a construction would stretch the meaning of the words very much further than a proper regard for the controlling power of the Supreme Court would warrant. It would make that body a machine for simply grinding out law to order, regardless of its applicability to the case before it. The next case is *Smith v. Maryland*, reported in 18 Howard, 71, decided in 1855. The court say in the course of the opinion:

"That part of the law in question containing the prohibition and inflicting the penalty which appears to have been applied by the State court is as follows (1883, ch. 254): Section 1. Be it enacted by the General Assembly of Maryland, That it shall be unlawful to take or catch *oysters* in any of the waters of this State *with a scoop or drag*, or any other instrument than such tongs and rakes as are now in use and authorized by law. The question is whether this law of the State afforded valid cause for seizing an enrolled or licensed vessel of the United States and pronouncing for its forfeiture. To have this effect we must find that the State of Maryland had power to enact this law * * * This power results from the *ownership of the soil*, from the legislative jurisdiction over it, and from its duty to preserve unimpaired those *public uses* for which the soil is held." (Vattel, Bk. 1, ch. 20, section 246. *Cornfield v. Correl*, 4 Was., 376.)

As we have already said that there can be no question as to the ownership of the soil under the waters by the several States, and that as such owner the States have exclusive control of the oyster fisheries, yet the court, even in this case, is so fearful that a broader construction may be given the words than intended that they hasten to define exactly what is not included in their decision in the following words:

"Its (referring to the statute of Maryland quoted) avowed and unquestionably its real object is to prevent the destruction of oysters within the waters of the State. It does not touch the common liberty of taking oysters save for the purpose of guarding it from injury to whomsoever it may belong and by whomsoever it may be enjoyed.

"Whether this liberty—that is, the liberty of taking oysters—belongs exclusively to the citizens of Maryland, or may lawfully be enjoyed in common by all citizens of the United States; whether the national Government by a treaty or act of Congress can grant to foreigners the right to participate therein, or what, in general, are the limits of the trust upon which the State holds its soil, or its power to define or control that trust, are matters wholly without the scope of this case, and upon which we give no opinion."

The court distinctly say that they do not decide any questions involving the relations of the national Government to the fisheries of any kind, because they are without the scope of the case, and yet this case has been strongly argued as ruling the very question the Supreme

Court disclaimed in words any intention of considering at all. The third case is *McCready v. Virginia* (94 U. S. R., 391). The first words of the opinion in this case prescribe definitely the limits intended to be covered by the language used.

"The *precise question* to be determined in this case is whether the state of Virginia can prohibit the citizens of other States from planting oysters in Ware River, a stream in that State where the tide ebbs and flows, when its own citizens have that privilege."

But the following sentences, found in the course of the opinion, have been construed as blanketing the whole subject of the fisheries, not only the "precise question," but every other question relating to the matter.

"There has been, however, no such grant of power over the fisheries; these remain under the *exclusive control* of the State, which has consequently the right, in its discretion, to appropriate its tide waters and their beds to be used by their people as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is, in effect, nothing more than the regulation of the use by the people of their common property."

Keeping steadily in view the "precise question" intended to be decided, it is scarcely probable that the fisheries referred to included all fisheries, floating and fixed; but of one thing we are sure, viz, they did include the right of planting oysters in Ware River. It would be an unusual proceeding of the court to embrace every product of the sea within a case involving only a right to plant oysters in a certain river.

John Randolph Tucker, in his report upon this subject already referred to, says of this *McCready* case:

"It is true that the last decision, though in the opinion made to apply as well to floating as shellfish, only *applied in fact to shellfish*."

At the time this decision was rendered (1876) the treaty of 1871 with Great Britain was in force, and while its provisions did not apply to the waters of Virginia, at the same time, if this sweeping effect is given to this decision, it would be equally as applicable to all similar waters in the United States. It must be borne in mind that the court was bound to take judicial notice of this as of all treaties, and we must conclude that it did. So that if all fisheries "remain under the exclusive control of the States," and are at the same time "common property" of the citizens of each State, this decision would be in effect a judicial abrogation of Article XIX of that treaty. It can not be said that the opinion has a double application, and, therefore if all fisheries are under the *exclusive control* of the States the United States had no rights left to grant to subjects of Great Britain or anyone else, and if these sea fisheries are common property of the citizens of the States they could not be granted by anybody but the owner, the State. Therefore if a citizen of Great Britain had been arrested while in the act of taking menhaden or mackerel in Casco Bay, Maine, it would be only consonant with this reasoning to conclude that he could have been convicted under a decision upon a statute forbidding the planting of oysters in Ware River, Virginia, which declared that statute unconstitutional, and thenceforth the law.

And yet if such construction thus forced be correct, this statute has been enlarged in its effect by judicial decision and made to apply equally to one kind of fish as to the other, a condition contrary to all reason and precedent. On the other hand, if the decision be considered as applying to the "planting of oysters in Ware River," there is no conflict with the treaty of 1871, because the right to take shell-fish was excepted from the privileges granted therein. We submit that the court

would hardly, by implication, practically abrogate a treaty article, when its provisions were not even referred to or considered in the argument or the opinion and assuredly not by a mere dictum, foreign entirely to the "precise question to be determined."

It therefore seems most reasonable, to confine this decision where the court itself confined it to this proposition, that Virginia owns the beds of her rivers and the oysters thereto attached, leaving the decision of any other question to be determined when it should arise.

The latest case, *Manchester v. Massachusetts* (139 U. S., 240), is the only one that refers to the subject-matter of the bill before you—the free swimming fish of the waters, and we must therefore look to this case for an indication of the existence or nonexistence of the power of Congress in the premises. This case arose under the statute of 1886, of Massachusetts, which forbade the taking of menhaden by purse seines in Buzzards Bay, a bay less than 6 miles wide at the mouth. The court go into an elaborate and careful analysis of all the law, ancient and modern, concerning rights of fishery and their control, and after deciding that Buzzards Bay can be considered a part of the territorial jurisdiction of Massachusetts in the sense that the nation can define its sea boundaries, they use the following forcible language, to which we direct the closest attention:

"The waters of Buzzards Bay are of course navigable waters of the United States, and the jurisdiction of Massachusetts over them is necessarily limited." (*Com. v. King*, 150 Mass., 221.)

But there is no occasion to consider the power of the United States to regulate or control either by treaty or by legislation the menhaden fisheries in these waters (referring to Buzzard's Bay, an inland bay of the State of Massachusetts), *because there are no existing treaties or acts of Congress which relate to the menhaden fisheries within such a bay.* The rights granted to British subjects by the treaties of June 5, 1854, and May 8, 1871, to take fish upon the shores of the United States had expired before the Massachusetts statute of 1886 was passed, which the defendant is charged with violating.

The Fish Commission was instituted "for the protection and preservation of food fishes on the coast of the United States." Title 51 of the Revised Statutes relates solely to food fisheries, and so does the act of 1887; nor are we referred to any decision which holds that the other acts of Congress alluded to apply to fisheries for menhaden, which is found not to be a food fish, but to be only valuable for the purpose of bait and to manufacture into fish oil. If there be a liberty of fishing for swimming fish in the navigable waters of the United States common to all the people of the United States, *upon which we express no opinion*, the statute may well be considered a reasonable regulation of this liberty, and the subject is one which a State may well be permitted to regulate within its territory *in the absence of any regulation by the United States.* The pertinent observation may be made that as Congress does not assert, by affirmative legislation, the right to control the pilots in the bays, inlets, rivers, harbors, and ports of the United States, but leaves the regulation of that matter to the States. (*Cooley v. Board of Wardens*, 12 Howard, 299.)

"So that, if it does not assert, by affirmative legislation, its right or will to assume the control of menhaden fisheries in such bays, the right to control such fisheries must remain with the State which contains such bays. *We do not consider the question* whether or not Congress would have the right to control the menhaden fisheries, which the State of Massachusetts assumes to control, but we mean to say only

that, as the right of control exists in the State in the absence of the affirmative action of Congress taking such control the fact that Congress has never assumed control, is persuasive evidence that the right to control them still remains with the State."

A careful consideration of this opinion will show that the court, as they say, did "not consider the question whether or not Congress could have the right to control the menhaden fisheries, which the State of Massachusetts *assumes* to control; therefore, if they did not even consider this question, how can this case be claimed as having any influence or effect upon the power of Congress in the premises. Another thing is plain, that the menhaden fisheries are one of the subjects of coördinate commercial regulation, and that Congress can take supreme control when it wills. The words of this Manchester case point directly to the constitutionality of this legislation.

In the language of him who has so long and conspicuously filled the office of attorney-general of New Jersey, in which he states his conclusion upon this question after a most thorough and exhaustive research as follows—

"I am also of the opinion that Congress has territorial jurisdiction and right of property sufficient to enable it to protect the fisheries and regulate the conduct of the citizens of the United States and of all other nations within the three miles (with respect thereto); that if, in the exercise of the treaty-making power, the President and Senate have parted with the control of the subject so far as regards any particular nation or nations, this does not prevent the exercise of that power as to other nations (by the Congress), nor as to their own citizens." (Opinion of John P. Stockton, April 10, 1882.)

We submit, therefore, that the control and regulation of the fisheries is vested in the Congress of the United States, to be exercised when it may in its wisdom be deemed for the public benefit, and that the bill before you is constitutional.

III.

Should Congress exercise its power over the fisheries?

A large volume of testimony was taken by the committee, most of which tended to show the imperative necessity of a different system of regulation than that at present practiced by several of the States. Regulation to them has been in many cases prohibition.

As this testimony was given, not only by practical fishermen and fish dealers of all kinds, but by scientific men as well, and remains uncontradicted, it would seem that the power of Congress, being once established, the wisdom of the legislation is apparent and beyond question.

The whole subject at the present time narrows itself down to this one proposition, whether the States of Maine, Massachusetts, and Virginia shall be permitted to prohibit the taking of menhaden and mackerel on their shores, and thus deprive the people of the United States of this source of food and wealth.

"The final cause, as the philosophers say, of the existence of the sea fish is that they shall be caught by man and made an article of food by man. It is an innocent use of the high seas, the use which I have just described. More than that, it is a meritorious use. The fisherman who drops his net into the sea creates a value for mankind, and therefore his work is meritorious. It is, in the words of Burke, 'wealth drawn from the sea,' but is not wealth until it is drawn from the sea." (Halifax Commission, page 1653.)

Nor is eminent authority lacking to show that this question of the fisheries in relation to the food supply of the country is one worthy of consideration and action by the Congress. It has been repeatedly urged as a measure of the utmost national importance. We are thoroughly convinced that this matter should be considered and some regulations adopted.

A few citations from our predecessors will show the importance of such action.

Hon. Robert J. Walker, whose ability as a statesman is nowhere seriously questioned, in a letter to Mr. Seward, Secretary of State, dated April 24, 1868, thus describes the value of the fisheries as a source of food supply. He says:

"But there are other more important considerations connected with extended coasts and great fisheries. The fisheries are capable of furnishing more and cheaper food than the land. The reasons are:

"(1) The ocean surface is nearly four times that of the land, the area being 145,000,000 square miles of ocean surface to 52,000,000 of land.

"(2) The ocean everywhere produces fish, from the equator to the pole, the profusion of submarine animals increasing as you go north up to a point but 433 miles from the pole, and believed to extend there; whereas, in consequence of mountains, deserts and the temperature of the surface of the earth in very high latitudes, less than half of its surface can be cultivated so as to produce food in any appreciable quantities.

* * * * *

"(4) The ocean produces food in all latitudes for the support of animal submarine life. These are squid (the principal food of the whale), also abundance of nutritious sea-grasses, etc., upon which the fish feed. Besides, as the earth is more and more cultivated, and farms, as well as towns and cities, drained by creeks and rivers to the seas, the submarine food is correspondingly augmented. Even in mid-ocean the phosphorescence observed there is produced by the presence in the water of myriads of living animals.

"(5) While the earth produces food by plowing its surface only a few inches deep, the ocean supplies myriads of fish, tier on tier, thousands of fathoms deep. Thus the registered take of herrings in the Scotch fisheries in 1861 was 900,000,000, whilst that of Norway, in the latitude of Iceland and Greenland, was far greater. Perhaps, however, the main reason why the ocean produces so much more food for man than the land is, whilst land animals only give birth to one or two of their young at a time, some fish produce millions of ova, to be matured into life. Thus, a female cod has been found to contain 3,400,000 ova; and other fish, ova varying several millions to 36,000. Hence the vast success attending the increased production of fish by transfer, by sowing the spawn, and other methods known to ichthyology."

The late S. S. Cox, in a memorable speech to the House on the subject of the fishery exhibition in Washington, gives the fisheries their true position when he says:

"Calling to its aid learned men and humane, the English Parliament enacted, after much investigation, the sea fisheries act of 1868. A prolonged inquiry by a commission, of which Prof. Huxley was a member, led to this. The act repealed obsolete laws, established liberty to fish in any part of the sea, bays, and estuaries; and in various ways it gave the impulse of good regulations to this industry in Great Britain. It did not go so far as the Roman precedent, when Domitian ordered a special session of the state to discuss the cooking of a turbot, but it displayed

a wise foresight as to the catching and preservation of the British herring and other fish.

"A legislator caring for the common weal should not only look at the economic value of fish as food for the people, but he should also regard the fishes as a fostering element in seafaring and training for maritime adventure and hardship, with a view to the humanities of life-saving on the coast and the possibilities of international conflict."

"What wonderful advancement we have made since the beginning of the 17th century in gathering the harvests of the sea the census returns will demonstrate. This was best seen at the Berlin and London exhibitions, where, to the eye of mankind, our progress was conspicuously manifest.

"A similar display was about to be made here. What place more fit than our own museum? Under the efforts of Professors Baird, Goode, and others this industry has received fresh momentum and gained grand results, 'known and read of all men.'

"But all their efforts would have been in vain for the advancement by scientific methods without the aid and countenance of the Federal legislature." (Speech of Hon. S. S. Cox, House of Reps., May 12, 1884.)

And in the same speech he says:

"The fishery interest is one which the last census shows to be of immense importance. Perhaps it is most important to New England, considered in its deep-sea bearings and for purposes of commerce; but since the plans of Commission have replenished and multiplied food fisheries in our estuaries, bays, and streams, it is of great importance to the inland as well as to the coastwise States.

"I confess, Mr. Speaker, to being especially interested in this subject. From Cape Hatteras to the Gulf of St. Lawrence, where mackerel and menhaden are taken; from North Carolina to Massachusetts, where the oyster and the other mollusks abound; about the keys of Florida, where the red snapper is caught in abundance; from the fur-seal fishery of Alaska to the North Pacific, which our whalers penetrate; from the waters where rolls the Oregon, that once heard no sound save its own dashing, but now hears the hum of men engaged in a great industry, to the Great Lakes, where whitefish play around the isles made memorable by Perry's victory; from one end of our land to the other, over one hundred thousand of hardy men pursue this interesting and adventurous industry. A million of souls depend upon this pursuit. Their fleet is nearly 7,000 vessels and 45,000 boats. Even upon such a small bill as this, Mr. Speaker, we may signal from this Capitol and District to these toilers of the sea our interest in their avocation, and elevate it and protect it without detracting from and burdening other interests.

"Here there can be no 'overproduction.'"

It would seem that language could not be used more forcibly to point out the importance of watching and guarding the rights of fishermen, the "toilers of the sea," by the Congress.

The present Vice-President of the United States in a speech on "Fisheries and Fish Culture," said:

"At the first glance a proposition to expend money on an international fishery exhibition at Berlin is likely to be viewed with indifference. This indifference to our fisheries and to these exhibitions has existed for years and was never more manifest than now.

"The production of fish is a source of national wealth, and in the early history of the world it was a preventative of famine and distress.

Experience has shown that while it is a luxury of the rich it is preëminently the poor man's food.

"This is understood thoroughly in the countries where food production and cheap living are carried to the greatest perfection. It is estimated that about forty-five millions of Chinese subsist almost entirely upon fish.

"Other countries do not look upon fisheries as we do." (Speech of Hon. Levi P. Morton, House of Representatives, February 4, 1880.)

It will thus be seen that, from an economic point of view at least, we are not alone in our opinion that the enactment of legislation to encourage the fisheries conserves the best interests of all the people. What will be the effect of this particular legislation upon the several States? As the laws of the States now are the very best fishing grounds for mackerel and menhaden are within prohibited lines; that is to say, the States of Maine and Massachusetts, and these two only have enacted statutes which prevent absolutely the taking of these fish in inshore waters by anybody, the statutes of Virginia permitting fish to be taken only by her own citizens.

It will not be necessary to examine the statutes in question, except as to their effect and operation. The testimony all showed that they deprived the fishermen of access to the very best fishing waters and created contentions, lawsuits, and continued strife. The prophecy of Mr. Acklen in 1879, with which he closed the favorable report of the Commerce Committee of the Forty-sixth Congress upon this subject, has become a realization, and these words from that report could, in truth, be used in the present tense:

"To admit the possession of such authority by a State would be to impair the very principles upon which this Government is founded. that State which attempts to preserve this authority by destroying the trade of the citizens of other States, by involving the innocent and guilty in one common ruin of reckless legislation, if it act from choice of such means, would confess itself unworthy; if from inability to find any other terms, wholly incompetent to the ends of its institution. The result could hardly be foretold if the States were to possess, as separate sovereignties, those unlimited powers over their commerce and sea fisheries. Soon that selfish principle—which well controlled is salutary, but which unrestricted is so unjust and tyrannical—guided by jealousy and stimulated by political feeling, would, sooner or later, show itself in iniquitous laws and impolitic measures, utterly ruinous to the peace and welfare of this Union." (House Report 7, Forty-sixth Congress, first session.)

The products of the sea adjacent to our coast belong to the whole people, and no State ought to deny to the citizens of any other State the right to take therefrom anything that would prove of value or advantage to the rest of the people. The regulation of a matter which vitally affects so large a portion of the citizens should be, from a practical point of view at least, entirely under national control, beyond the jealousies or prejudices of any locality. And in view of the fact that at this time valuable industries are likely to be swept away, it is of greater importance for us to take care that the general welfare is not thus sacrificed.

If the States in question had shown that they could profitably use and obtain the full benefit of this bounty of nature thus thrown upon their coasts it would modify our opinion greatly, and probably lead us to the conclusions that such regulations as had been adopted were wise and salutary, and to attempt to displace them would only be provoking

discord. But the testimony was that this flat denial of the right to fish for these migratory fish was of no possible benefit to any of the States to which we have referred.

This phase of the question was perhaps stated, not immoderately, by one of the witnesses before us, speaking of the operation of the law of Maine:

"Under this law, gentlemen, and I speak from a bitter personal experience, our property was seized, our captains arrested and dragged to Portland for trial as criminals, a horde of so-called fish wardens, impelled by a desire for gain at the fisherman's expense, swarmed the waters and informed on every boat whose name they could learn, whether it was violating the law or not, or even in the vicinity. 'Let the fisherman prove they were not there,' said these harpies. The fish, during the season of 1891, from causes unknown, were in the bays and small arms of the open sea, and so this law applied because of a decision of the supreme court of Maine, that in computing the three miles mentioned in the law you could jump with your measuring rod from island to island, and if these islands were less than three miles apart, of course we were barred.

"The practical operation of this decision, in addition to the fines and lawsuits we were compelled to defend, which were severely onerous, was to drive us out of Casco Bay and other large bays, where there were great bodies of menhaden and mackerel. Casco Bay, from Portland Head to Small Point, is 19 miles wide at its mouth, but being full of small islands—some 365, I believe, in all—by the system of measuring adopted by the supreme court of Maine, we could not enter there.

"This may be good law, but I ask you, gentlemen, isn't it straining matters pretty hard that a State should have the jurisdiction of such a large body of navigable water and deny to one holding a fishing license from the Government the right to exercise the privilege supposed to be granted by that license? Isn't it high time that you interpose to prevent this monstrous iniquity? Our property is there to-day valueless. We are compelled to answer nearly one hundred suits brought against us, the statements upon which they are founded being in most of the cases false. What was the result? That great bay full of fish and the gates locked against us! Surely you will say it must be that some other interests were greatly benefited by way of compensation for this sacrifice of the fishermen. I tell you, gentlemen, and I defy contradiction, that for the loss of nearly \$750,000 to the menhaden fishermen, and four times that amount to the mackerel fishermen, which was caused by the operation of this law in 1891, not one person, man, woman, or child in the State of Maine, or in all this land, ever got, directly or indirectly, one dollar's worth of compensation or benefit. The fish remained there all summer and in the fall suddenly disappeared, and that was the end of it. A more magnificent illustration of the fable of the dog in the manger has never been recorded."

If that is true, and it was not contradicted at all, it would seem that there was something radically wrong somewhere. The truth of the matter is that you can not, by restrictive legislation, affect the coming or going of these sea fish, their plenty, or their scarcity. Nothing that man can do can have the slightest possible influence over them.

The Assistant United States Fish Commissioner, the fish commissioners of Connecticut and New York, all bore testimony to this fact, and stated it as the conclusion of nearly all the leading investigators of the subject, both in this country and abroad. These conclusions were

stated to the committee by Capt. Collins, Assistant United States Fish Commissioner, in the following portions of his testimony, pages 55, etc.:

“Mr. LAPHAM. Would it cause any intermission in the supply after the bill had been in force for some time, or a scarcity, because of the large increase of the catch?

“Mr. COLLINS. There is no reason that I know of for anticipating that. The researches and inquiries made by the Fish Commission I think show exclusively that certain species of migratory fish, like the mackerel and menhaden, are subject to influences which determine their abundance outside of anything that can be done by man—influences that are much more potent than man's are. As a matter of fact, and I think as a matter of recorded history, the mackerel has been supposed to be in danger of becoming extinct ever since the early settlement of New England.

“About 1680, I can not give the exact date, certain restrictive measures were passed by the general court of Massachusetts, because it was then thought, as I understand it, that the mackerel was liable to become extinct from overfishing; and it may be pertinent to remark that the catch at that day was very limited. It was almost exclusively in drag seines, operated from the shore by men running out the seine in a semicircle and hauling it in on the coast by lines.

“Another thing. As will be readily understood by the committee the demand for fish in sparsely settled coast districts was then very small and there were none of the facilities for transportation and preservation of fish that are in use to-day. It is also well known that no species of fish known to man has varied more in its abundance than mackerel; and it would be difficult to believe that during the absence of the mackerel from the coast in the winter, when they are gone beyond the reach of man, beyond his knowledge, so to speak—because we do not yet definitely know where its winter quarters are—it could be seriously affected by anything that man could do. In fact it is entirely unaffected in winter by his operations. We see that a season of decided scarcity may be followed by one of comparative plenty; and a series of years, as at the present time of scarcity, may be followed by a gradual increase until an abundance is reached that is very surprising. This has been the history of the mackerel fishery since its inception. In 1831, I think it was, the largest catch of mackerel was obtained on the coast, by New England vessels, that had ever been secured until recent years. Then hook-and-line fishing only was practiced. Immediately thereafter the mackerel began to decrease in abundance, and between 1836 and 1847 was the least abundant that it has ever been known until these recent years. Then it began to grow more plentiful, but the increase was not at all regular. It fluctuated very much, as the diagram of the pack in Massachusetts would very clearly demonstrate.

“I will say that between 1850 and 1860 the purse seine came to be more generally used than previous to those dates, and about 1870 purse seining was practically the universal method of taking mackerel. It may be well to refer to this matter, because it is one I think the committee may not be well informed of. A few years later, or rather between 1870 and 1880, mackerel were scarce in some years, and the cry went up, as everyone familiar with the fishery knows, that the species was being destroyed by the operations of purse seines in the fisheries. As a matter of fact, however, and as one that is worthy of consideration, in 1884, I think it was, the largest catch of mackerel was made that was ever known in the history of the United States. Since that date there have been fluctuations in the catch, but for the last three

years there has been an abnormal scarcity. Whether the mackerel will return to our coast in the future might be questioned by those who see in the purse seine a most effective method of destruction; but it is a well-known fact that the catch of last year was about double that of the year previous, and there is no reason, looking at the history of the mackerel, to doubt that it will return in time in as great abundance as it was ever known on our coasts.

"The CHAIRMAN. Your opinion is that the scarcity is caused by the migratory habits of the fish and their not returning to these coasts periodically, and that it is not caused by the fishermen with purse nets?

"Mr. COLLINS. My opinion is that there are causes which produce this scarcity which are not definitely determined. It may be the migratory habits of the fish which cause them to visit regions where they are not commonly sought by the fishing vessels. They may be deterred by a strata or layers of cold water from performing their migrations in certain seasons to the full extent they do in other seasons. It is doubtless a fact that their abundance or scarcity is in a large measure due to the attacks of predaceous enemies.

"Mr. LAPHAM. Other fish, you mean?

"Mr. COLLINS. I mean other fish; and not only fish, but the squid. We have statements to the effect that young mackerel have been seen taken by the squid and destroyed by them in great numbers, and when we consider that the squid is one of the most abundant inhabitants of the sea from Hatteras to Labrador, and that it is one of the most active and predaceous animals known; that the mackerel when young is easily captured by it, and is a species upon which it preys extensively, it is not difficult to imagine that millions of barrels might be destroyed in a single year.

"Mr. MAGNER. Do you think the scarcity is ever caused to any appreciable extent by the catch of the fishermen with their purse nets?

"Mr. COLLINS. Do you mean to ask whether there are less mackerel by reason of the purse-net fishing?

"Mr. MAGNER. Of course there are less, but I mean to any appreciable extent.

"Mr. COLLINS. No; I think not.

"Mr. MAGNER. You do not think they cause any scarcity of mackerel visiting our coast?

"Mr. COLLINS. That would be my opinion, based on a practical experience extending over thirty years and a study of these matters extending over thirteen years.

"Mr. MAGNER. The same is true of menhaden, I suppose?

"Mr. COLLINS. I think practically the same may be applied to menhaden. The menhaden, though appearing in varying abundance in different years, had not up to this time, so far as I am informed, shown the same degree of fluctuation as the mackerel. It has in certain regions, perhaps, more so. That is to say, as I presume the committee knows, it has disappeared practically from the Gulf of Maine for a period of ten years.

"Mr. MAGNER. Do you think the catches of these fishermen have any effect upon the scarcity or plentifulness of other food-fishes, such as the bluefish?

"Mr. COLLINS. I think the bluefish comes under the same category as the mackerel. It belongs to the same family. It is an ocean wanderer; and on one occasion, or for a period I will say of forty years, it disappeared from the waters of our northern Atlantic coast, and when it returned it was a stranger, so much so that old fishermen did not know what species of fish it was.

"The CHAIRMAN. Are any great number of bluefish or other food fish taken by these nets when menhaden are taken?"

"Mr. COLLINS. So far as the investigations and inquiries of the Fish Commission go, no.

"The CHAIRMAN. How can that be avoided; or how is it avoided?"

"Mr. COLLINS. For the reason that the menhaden schools very closely, and particularly so when it is beset by enemies. It will crowd in so closely on some occasions as to actually lift the fish in the middle of a school out of the water. I have seen that myself. I will say in reply to that question that the Fish Commission a few years ago went to the trouble to send one of our experts out on a menhaden steamer. If my memory serves me right he made several trips on it to observe the method of fishing and particularly to learn what quantities of food fish were taken with the menhaden in the seines. He has testified in a previous Congress before this committee.

"Mr. CARUTH. Is he still connected with the Commission?"

"Mr. COLLINS. No, sir; he is in the National Museum.

"Mr. CARUTH. What is his name?"

"Mr. COLLINS. R. E. Earle. I will say that he testified before the committee on that occasion that, although he saw many hauls of menhaden taken on board of the steamer, there never was at any time, as I remember it, enough food fish taken for the table on the vessel. Mr. William P. Seal, who is now in Chicago but who is connected with the Commission, had occasion to go to the Chesapeake Bay some months since to make a collection for our marine aquarium at the central station in this city, and while there he had the opportunity to see the catch of several menhaden steamers. I may not be wrong in supposing that he went out on the vessels. In any event he has placed on record his observations and has stated distinctly that not enough food fish were taken for the crew of the vessels.

"The CHAIRMAN. Where were these hauls made; out on the open ocean?"

"Mr. COLLINS. Those hauls that Mr. Earle saw made, I think I am right in saying, were made in the open ocean or in the deep water of Long Island Sound.

"The CHAIRMAN. Suppose they were made in the bays where this bill gave them the right to make them——

"Mr. COLLINS. I was going to remark that those hauls, the result of which were seen by Mr. Seal, were made in Chesapeake Bay.

"Mr. N. B. CHURCH. If the Chairman will allow me I will state that Mr. Earle was with me at the time he made these observations, on the boat with me, and the fish were caught on the Jersey coast, about 2 miles from shore, in from 15 to 24 feet of water.

"The CHAIRMAN. This bill gives you the right to fish in certain bays and estuaries. Suppose the hauls were made in those waters, would you not be apt to take more food fish?"

"Mr. HOPKINS. That is a disputed point between you and the Jersey fishermen, is it not?"

"Mr. COLLINS. There is a dispute between them; but one is imagination and the other is experience. Capt. Church can speak more definitely than I can in regard to that particular matter. I do not remember just what vessel Mr. Earle went on; but in regard to taking food fish in the bays I can simply give the committee the benefit of my experience and knowledge; that is, experience gained from observation.

"Years ago when I was in command of a fishing vessel sailing from Gloucester I had occasion several times to go aboard steamers fishing

in the bays of Maine, more particularly in Penobscot Bay, well up near the mouth of the river, and I had the opportunity to know, of course, where we were taking forty or fifty barrels of menhaden, the relative quantity of food fish. I recall that on one occasion there was a single flounder that I found among the menhaden, and I also remember that in getting bait from a menhaden steamer in Narragansett Bay for the Fish Commission schooner *Grampus*, in the summer of 1886, there was one little bluefish taken in the haul of several hundred barrels. I remember it distinctly, because a name was given to the fish that I had not previously heard. They called it a 'nipper,' because it swam with or near menhaden, and occasionally bit on the sides of the other fish. It was about this long [illustrating].

"The CHAIRMAN. Is the menhaden a food fish for the bluefish and other food fish?

"Mr. COLLINS. That the bluefish may occasionally eat the menhaden is probably true. That it attacks them voraciously is well known from the observations and studies of the Fish Commission, and I think it is also the result of some studies that Mr. Blackford has made. Some investigations that have been made in New York disclose that bluefish when on the coast are rarely found with menhaden in their stomachs, excepting it may be cut pieces thrown over by the fisherman or taken from the hooks of fishermen. Dr. Bean, ichthyologist of the Commission, made some observations a few years ago, and among other things he opened a great many bluefish and examined the contents of their stomachs. He could doubtless tell you more definitely than I can the result of his observations; but I may sum them up in a word, from what I have heard him say, that the contents of the stomachs of the bluefish were almost always shiners—little fish that swim along the coast in great numbers and that could easily be swallowed by the bluefish."

Again, at page 61 he says in reply to questions:

"Mr. HOPKINS. To go back to the original question I put, do you think this bill is in the interest of the food fisheries along the seacoast?

"Mr. COLLINS. I should think it was.

"Mr. HOPKINS. Just give your reasons for that.

"Mr. COLLINS. My reason is this: I think I have stated sufficiently for the clear understanding of the committee that the menhaden fishery, in the first place, is a source of bait supply, which is important to the successful prosecution of our ocean and bank fisheries. Another thing, the more bait our fishermen can obtain on our own coast the less they are dependent upon obtaining a supply from the British provinces. There are also times when the mackerel are driven into the bays or fiords on the coast of Maine, and may appear there for a few days in great numbers. Their stay is only temporary. They depart and go out into the open ocean, or, perhaps, no one knows where. Now, if the fishermen are prohibited from taking those mackerel, a vessel that is fitted out at great expense, which is costly in itself, and which has a crew of 18 or 20 men, and may have been cruising for two months without catching a barrel of fish, may find itself in the presence of immense quantities of fish where it could get a cargo in two or three days to the detriment of no one, and if the opportunity is not improved those fish disappear the next day and no one can get them again during the season.

"Mr. HOPKINS. To what, then, do you attribute the objection to such legislation as this; to line prejudice? My observation is they are all opposed to it. That was the experience we had in the last Congress on this question.

"Mr. COLLINS. I presume that there is no subject that has ever come up for the consideration of Congress concerning which there is more prejudice than that of fishing. People living in one locality, with the best intentions possible, are apt to understand these questions from their own standpoint. They see, for instance, bluefish in the Jersey shore come along to-day, and all of a sudden they are gone, and they may not reappear there again for weeks. It is very natural for those men, with their limited vision, and I do not say it with any desire to be disrespectful, to think that the bluefish are scarce, that they have been driven off the coast, when at the same moment perhaps, bluefish are so abundant off Nantucket that the oldest fisherman has never seen the like of it; or they may be swarming in Chesapeake Bay. That is brought to our notice every summer, because we have our agents out and are making our investigations all along the coast, and while we hear complaints perhaps from one section of the scarcity of fish, and the local fishermen are ready to denounce certain methods and certain men for taking them by those methods, in other sections the same species occur, as I have said, perhaps in greater abundance than ever was known before. You take these migratory species that come from the Gulf of Mexico to Maine, or from San Diego to Washington on the Pacific coast, and their movements are governed by causes that it is impossible for man to regulate. There is liable to occur at any time fluctuations of abundance in localities that would give rise to doubts and prejudices in the minds of those who are perfectly fair and desire to be just, but who have not the means of seeing all the rest of the coast."

And again, at page 69, he sums the matter up fully:

"Mr. BROWN. It has been stated here, Captain, that Prof. Baird made the unequivocal statement that nothing man could do could have any effect upon the quantity of food-fish that might come to our coasts. I mean by that, the migratory, free-swimming fish of the ocean. Do you recall anything of that kind?"

"Mr. COLLINS. Yes. Prof. Baird, I think, both in his report and verbally, made statements of that character; and such statements, I will say, have also been made by Prof. Huxley, of England, and by others, I believe, scarcely less eminent.

"Mr. BROWN. That is your belief, is it not?"

"Mr. COLLINS. I believe that these wandering pelagic tribes of sea fish approach the coast at certain seasons and are influenced in their movements by temperature, primarily, and by other causes which are not so well understood, and that they may have their abundance materially affected without man's influence at all.

"Mr. PALMER. Do you not believe that the purposes of agriculture, mining, manufacturing, and things of that sort could be served without the fishermen invading the 3-mile limit?"

"Mr. COLLINS. I believe that to restrict the menhaden fishery out to the 3-mile limit, or to prohibit its prosecution inside of the 3-mile limit, would be to destroy it. It could never be profitably prosecuted outside of the 3-mile limit, and I think that no one would undertake to carry it on with that restriction.

"Mr. PALMER. Before the invention of seines and nets, for the purpose of catching fish, have you any idea that there was such a surplus of menhaden as to disturb the balance which Providence has provided for the fisheries?"

"Mr. COLLINS. Probably not; but if we go back before the invention

of seines and nets, we would have to go back a great many years. I believe the invention of those devices is prehistorical.

“Mr. PALMER. I do not mean to carry it back so far as that. Take it from 1860; do you say that there was such a superabundance of menhaden that the balance of the fisheries was not well preserved at that time?”

“Mr. COLLINS. I think there is no fear of that. As you doubtless know, Prof. Goode, on the basis of logical reasoning and a careful consideration, and also after due consultation with Prof. Baird and other authorities, has estimated that the number of menhaden destroyed by natural enemies, was, I believe, more than three million times as much as have been taken by man in the most successful season. If that is true, it would go to show that there need not be any greater abundance, or any abundance that would disturb nature, whether the fishery was prosecuted or not. Hence the prosecution of the fisheries would make no great difference.”

The whole testimony was corroborative of these statements and showed conclusively that the taking of these menhaden and mackerel had no appreciable effect upon the quantity that came to our shores, and that to attempt to restrict fishing for them by legislation was inutile, impracticable, served no good purpose.

It would be idle to attempt by any argument to show the importance of the mackerel fisheries to the United States. There is scarcely a man, woman, or child in this country, certainly not a family, in which this article of food does not figure as a necessity.

A few brief quotations from the evidence will show the ill effect of hostile State legislation upon this industry, and without accomplishing any compensating good.

Said one witness engaged in the mackerel-curing business:

“This year (1891), our harbor, as near to us as the Washington Monument, has been full of fish the year around from the beginning to the end. We have only about twenty days of the season to fish in. We can sit on our wharves and see those fish. No other class of men have any use for them. Our factories lie idle, our help is idle, uneasy, and impatient. Those fish were there and we have not the privilege of catching them.”

And one of the witnesses, a fisherman of forty years' experience and observation, thus forcibly describes the effect of this class of legislation:

“Capt. CHURCH. In regard to what the gentleman speaks of—that there is a law in the State of Maine preventing the taking of mackerel, there is also a law passed by the Congress of the United States four years ago preventing the taking of mackerel with purse seines before the 1st of June, for the period of five years. It was claimed by the parties that convinced Congress it was a wise enactment that if mackerel were left undisturbed until after June 1 they would locate on our coast in quantities to benefit the public by a large catch later on of superior quality. Their hopes and theories were all upset, for the catch next year after the law went into effect was 48,000 barrels, against 88,000 barrels the year before; next year it was 22,000 barrels; next, 19,000 barrels. The catch of mackerel jumped again to 47,000 barrels during the year 1891, and but for the Maine law could easily have been increased to 150,000 barrels, for mackerel were plenty in all the harbors and bays of the Maine coast for a number of weeks during the fishing season of 1891.

"Mr. MILLIKEN. Is it not true that mackerel left the coast of Maine and that after the passage of this law by Congress they came back again within the last three years?

"Mr. CHURCH. That is the point that I make—that when this law was passed the mackerel were on the coast of Maine, but the catch has fallen off from 500,000 barrels for the year 1884 to 20,000 barrels for the year 1890.

"Mr. MILLIKEN. Have not the mackerel come back since the passage of this law?

"Mr. CHURCH. Certainly, they have come back; but of what benefit are they to the people if they are never caught? I submit that there were hundreds and hundreds of miles of coast where they could have been taken last season, but only a paltry lot were caught by hook and line, and in pounds we could not get them, because the Maine law excluded us from using our seines where the mackerel were located. In 1878 there was a man by the name of Rich who delivered a lecture in the city of Boston, in which he advocated an international law prohibiting the use of purse seines for taking mackerel. In his opinion mackerel were gone never to return unless that manner of fishing was discontinued. The purse seine was used without restriction, and he was confronted six years later by a 500,000-barrel catch of mackerel in one season.

"Mr. MILLIKEN. Will the gentleman allow me to ask him a question? Did they not go off for about seven years, and have they not come back since the law was passed, and has not the law had the effect which the purpose of it was?

"Mr. CHURCH. No, sir; it is easy to see that if Rich's advice had been taken in 1878 the great crop of 1884 would not have been harvested. It was an unfortunate circumstance that the mackerel crop of 1891 were where the Maine law prevented them being taken. If they had been in Massachusetts or Rhode Island waters the harvest would have been reaped. As it is they have disappeared into the great ocean and are of no use to man. My point is this, in answer to Mr. Milliken's last question: Man, with his feeble apparatus, can make no appreciable effect on the great schools of fish that are constantly appearing on our coast. We have two illustrations of this truth; first, the great catch of mackerel in 1884, which upset Rich and all others of his way of thinking; second, the poor fishing that has existed on our coast since the restrictive law passed by Congress. The great crop of 1891 can no more be placed to the credit of the law than the scarcity for the three years after the law was passed.

"Mr. MILLIKEN. Was it not just after this year when you had the free and unlimited right to fish that there was a great scarcity of mackerel?

"Mr. CHURCH. Yes, sir; mackerel were scarce, as I said before, during 1878, and were with free and unrestricted fishing as plenty or plentier than ever before known; then were scarce again, and to increase the catch, Congress passed a law preventing their being taken; under the working of that law mackerel grew less and less for three years."

The result of this prohibitive legislation was told by a representative of the Boston Fish Dealers' Association. Mr. Mitchell's statement was fully corroborated in every way. He testified as follows:

"There is another thing that I am in a position to know, and that is that there is a great deal of criticism about the laws of Canada. It is an undoubted fact to-day that the restrictions imposed upon the fisher-

men in the State of Maine are fully as severe as those in the Dominion of Canada.

"Another view that has not been touched upon by any gentleman here, and which I think is worthy of consideration at least, is this: Ten years ago—my experience does not go back much further than that—all the foreign fish we used to get in this country came from the shores of the Prince Edward Island and Newfoundland, and you can count on that as a fact. But to-day our markets are the markets of the world. We are selling as many fish from Ireland as we are from Nova Scotia and Norway. There is not a week goes by but what some representative of that Government comes in our office and asks for statistics. They are asking us to send out information as to how we cure fish; and to-day in the State of New York you have only to say, 'I have an invoice of Norway mackerel on the way,' to find plenty of purchasers. They are gaining the supremacy in this market. You may legislate all you choose and impose all the restrictions you choose upon the mackerel, but after all said and done, they are coming in competition with countries who do not subject them to these restrictions which you place upon them. People are going to have mackerel to eat, and if you legislate against our own fishermen the other countries are going to supply the fish at the expense of your own fishermen.

"I suppose it is a little out of my line, but the question was asked yesterday—a very pertinent one, I thought—'Why don't your own legislature do something?' I knew there was some work being done there, and I saw by this morning's paper that it was necessary for the speaker to call for a rising vote in the House of Representatives to determine whether or not they favored the bill. It was so close that he could not tell otherwise. There is a large sentiment in favor of giving the right to a fisherman, that is, if he prosecutes this business legally and abides by the laws of this and other countries, to let him go and get his fish where he has a mind to, and if he chases them all the season and then finds them within the 3-mile limit, to let him go and take them there. Of course it is hard where they go into a fisherman's yard and take them out of his yard, for these things happen; but it is a disputed question whether it is 3 miles or $2\frac{1}{2}$ miles. As I understand it, there is a man on the lookout all the time that is going to "divvy" on the fines, and he is the man who determines whether it is 3 miles or $2\frac{1}{2}$ miles.

"As I said before, this thing appears to me in a different light than it does to many of the gentlemen here. I could give you statistics, but I have no disposition to do so, and I know you have no disposition to hear them. This is the proper view of it: We are going to have fish, and our market to-day is the world's, and if you do not allow our fishermen to catch them on this shore, Norway is ready to give us all we can sell and handle. The fishing business in the last four years has done more—American money has done more—for Ireland than home rule ever did; and it is necessary for a house prosecuting the commission business to-day to keep a man over in Europe six months in the year, which would not have been thought of five years ago, when we were getting all we wanted here."

And Mr. Eugene Blackford, formerly fish commissioner of the State of New York and an acknowledged expert upon this subject, thus graphically shows the pernicious effect of hostile legislation:

"I will state in regard to this mackerel fishing, during 1884, just two years before the question came up before Congress here in regard to the prohibiting of the catch of mackerel, that during that year, in the

space of forty-five days, there were landed at the piers of New York City, in the vicinity of Fulton Market, 60,000 barrels of fresh mackerel that went into consumption as food by the people that could be reached by rail and express from that city. Mackerel sold so cheap that you could take a wagon down upon the dock and have it loaded for 25 to 50 cents. All the handpeddlers kept their baskets filled for 5 and 10 cents. Now, that was a great blessing to poor people. They had an opportunity then to have a feast on one of the best food fishes that come upon our coast. That is after all this destructive fishing has been carried on for a long space of time; and two years afterwards this legislation is enacted which prohibits the catching of these same mackerel until the 1st day of June. And what has been the result? I want to call your attention to these facts, because they are vital to this whole question as to national legislation on our fisheries.

“Has anybody been benefited by the restrictive law as to mackerel-catching? I have not heard of any. The men who promoted this bill and this legislation now are convinced that they made a mistake and want it repealed. They say they are mistaken. The only interest that has been served, to my knowledge, has been the interest of the Canadian fisherman. As a dealer, I speak this knowingly. The mackerel appear upon our coast during the latter part of March; sometimes in the early part of April; and they are most plentiful in the latter part of April and early part of May, the very time when we are prevented from catching them off of our own coasts. By the 1st of June they have passed all of our fishing points along here, out of the reach of our fishermen, and have reached the coast of Nova Scotia or New Brunswick; and for the last three or four years, during which this bill has been in operation, the New York dealer has had to pay the Canadian fisherman from 20 to 30 cents each for the mackerel that has been caught in Canadian waters. We had these same mackerel, previous to this restrictive legislation, caught in our own vessels and sold by the wagon load for 50 cents. So you see the only interest that has been benefited by that legislation has been the Canadian fisherman.”

So that it may be regarded as proven that the legislation of the States has not accomplished any material good, but, on the contrary, has deprived the fishermen of their harvest, which is their due, and the people of the United States of a necessary and cheap source of food.

Millions of dollars are invested and thousands of men are employed in the mackerel fleet, and unless something is done to change the present system of regulation, disaster and ruin will inevitably overtake this industry and our people will be at the mercy of foreign fishermen. And all this because men are declared by law to be felons for embarking in a business enterprise which is a public as well as a private benefit. The other fishery included in the proposed bill—the menhaden—is also a migratory fish and the same statements already quoted apply to it as well as the mackerel. While at present it is not a food fish, it may so become in the course of time. But while it is not a food fish, the industry of which it is the basis is a very important one, not only as far as capital employed is concerned, but as a source of fertilizers for the farmers and fish oil for the tanners and miners.

One thing should not be overlooked in passing, and that is the importance of the menhaden fishery to agriculture and the farmer, as was stated to the committee by one of the witnesses. It has been well said that the sea is constantly robbing the earth. With every rain that falls from heaven the top soil of the hills and the valleys is carried

into the streams and thence into the mighty ocean. No man can calculate the value of this *débris*. It is certainly, therefore, only right and proper to demand of the sea that he return a little of that which he devours.

There are several forms in which this waste can be taken from the sea and returned to the land. There is the kelp fishery, for instance, on the coasts of Great Britain; the dog fisheries on the coast of Maine; and the porpoise fisheries on the coast of North Carolina; but none of these, either in quantity or quality, compares to the menhaden fishery. It would be safe to say that ninety-nine one-hundredths of all the fertilizers that are derived from the fisheries for the improvement of the land come from the menhaden fishery, and to injure or destroy this industry would be to deprive the entire Atlantic coast of one-half the resources which it now has for fertilizing, and the whole of that vast quantity would be a clear loss. It is not the result of anything that is to grow upon the land, but it is an absolute, clear gain to the soil of the entire amount so consumed. The destruction of so large a quantity of fertilizer would be such a serious matter that we doubt not for a time the operations of the farmer would be greatly impaired.

It will, therefore, readily be seen what the relations of the menhaden fisheries to agriculture are most intimate and far reaching. During and since the transition period, from higher to lower prices after the panic of 1873, the farmers of the United States have had a severe struggle for existence. The original natural fertility of the soil having been consumed by successive heavy crops and constant cultivation, it became necessary to apply artificial restoratives to the land to enable the tillers of the soil to raise their crops at such a cost as would enable them to sell at a living profit.

It needs no argument or demonstration to convince you that whatever affects the agricultural interests of the country reaches the vitals of its greatest source of prosperity.

The first artificial fertilizer used in this country was Peruvian guano imported from Peru, and this was sold to the farmers at prices varying from \$80 to \$100 per ton.

It contained from 10 to 12 per cent of ammonia, which was its chief element of value. Following its introduction, there sprang up a whole horde of manufacturers of so-called superphosphates or fertilizers which supplied to the farmer the ingredients of the Peruvian guano in much smaller proportions at prices far beyond its actual value, even at the prices that the producers of the raw material then demanded from these manufacturers. The average prices of these fertilizers were from \$10 to \$55 per ton.

At this time the only ammoniates used in the preparation of these superphosphates were nitrate of soda (also imported from Peru, but principally used in the manufacture of gunpowder), tankage, or dried slaughter-house refuse—the meat, tissue, bones, etc., and dried blood, the two last being the principal sources of supply.

The principal and most expensive ingredient of artificial fertilizers is ammonia, and the one most difficult to obtain. When the menhaden fishery was in its infancy a large part of this product of fish scrap was sold to a few only, who used it in its primitive state. As its great value began to be understood, it was demanded by the fertilizer manufacturers, which created a market for it, enlarged the operations of the fishermen, and made it possible to produce it in such quantities as would compete with the older forms of ammoniates.

It was not, however, until within the past ten years that the introduction of this product had the effect of lowering the price of this most valuable constituent of artificial fertilizers. In 1881 or 1882 the price of ammonia per unit to the fertilizer manufacturer was something like \$3.50 to \$3.85 (\$30 to \$50 per ton). It has been sold during the past season at \$1.85 per unit, and in previous seasons at a much less price, a reduction of 50 per cent.

This is the most expensive ingredient that enters into the constitution of artificial fertilizers; and you can readily see the connection of cause and effect when you are told that Peruvian guano has become a thing of the past, and a better grade of fertilizers than was ever before manufactured is now furnished to the farmer at a cost of \$22 to \$28 a ton. The fish scrap in its crude state contains as much ammonia as the Peruvian guano, and can be bought to-day by the farmer, not at \$80 a ton, the price of the Peruvian guano, but at \$30 a ton for dry scrap and \$15 for crude, a saving of more than 60 per cent. And when you consider that there are produced annually in the United States about 1,500,000 tons of commercial fertilizers, by means of which millions of acres of land are kept and maintained fertile and productive that must otherwise be practically abandoned, and that more than one-fifth of this vast quantity, or 300,000 tons, is made directly from the fish scrap we produce, it certainly seems to me to amount to a demonstration that, other things being equal, it would be a blow directly at the farming interests to attack this industry in any way.

The average yearly production of fish scrap, reduced to a dry basis, is about 50,000 tons, or, representing it by its equivalent in manufactured artificial fertilizers, say 300,000 tons. What relation does that bear to the crops of the country? It is estimated that 250 pounds of fertilizer are needed to raise one bale of cotton. If that is a fact, there was sufficient fertilizer made from fish scrap last year to grow the enormous quantity of from 2,000,000 to 2,400,000 bales of cotton. Let us take another view of the situation. The average yield of wheat per acre is about 15 bushels, which requires, let us say, 400 pounds of fertilizer to the acre—a very liberal estimate. This would show that the fish scrap produced by this industry entered into fertilizers sufficiently to raise 18,000,000 bushels of wheat. If we consider the fish scrap as a fertilizer by itself, we contribute to the crop-raising capacity of the country, at the very lowest estimate, from 400,000 to 500,000 bales of cotton, or from 3,500,000 to 4,000,000 bushels of wheat.

If the farmers of the country had been compelled during the last ten years to derive their ammoniates from Peruvian guano, it would have cost them, in excess of what they have paid, the vast sum of \$15,000,000. The North, the South, the East are, and in a short time the West will be, clamoring for cheaper fertilizers, and we must look to the sea to supply the demand. The plains of the west upon which cattle are raised are being converted rapidly into homesteads, and the cost of producing cattle will soon be much greater than at the present time, and will increase each year as land grows in value. The same argument applies to the raising of hogs. As these are principal sources of ammoniates outside of the fish scrap, you can readily see that if the cost of producing these is materially increased the farmer must pay more for his fertilizers. The farming interests being coextensive with the country itself, is it not right and fair to draw from the sea—which is the common property of the whole country—the nourishment necessary to maintain the fertility of the soil?

The enactment, therefore, of suitable legislation to encourage and ex-

tend the fisheries becomes of vital economic importance. If the bill under consideration becomes a law the product of fish scrap in any year when the fish are on our coast in large quantities will be doubled, and without taking from the present resources of the country one penny's worth of value. The source of the other forms of ammonia is the soil, and what is taken to produce them must be restored; the source of the ammonia from fish scrap is the life of the sea, which produces itself without cost to man.

And the uses to which menhaden oil is put are many and varied, a most important one, however, being the currying of leather. As you well know, in the manufacture of leather a certain quantity of oil is necessary. It is essential in this age of competition for the tanners to be supplied with cheap greases.

The result of the production of large quantities of menhaden oil has been to furnish to the tanners a cheap oil, adapted to their use, and, at the same time, to keep tallow and other greases down to a figure where the tanners can use them as well to advantage. The annual production of menhaden oil has averaged from 50,000 to 80,000 barrels, which is sold at prices varying from 25 to 35 cents a gallon. While the tanners are using other forms of grease, the competition of fish oil has become so keen that at least one form of tanner's grease (which was formerly imported from abroad) has been driven from the market, and is now replaced by articles of domestic manufacture; and instead of bringing greases from abroad to supply the tanners, large quantities of this menhaden oil are exported annually for this and other purposes. If the production of menhaden oil can, therefore, be increased, it is plain to be seen that the leather industry will be enabled to buy its grease at a much lower price, and thereby cheapen the cost of leather. We may say here, in connection with this, that this oil is refined and is used largely by miners as a burning oil in their lamps. It is well known that petroleum, owing to its explosive nature, is not adapted to use in the mines, and it becomes highly important to that branch of our native industries, in view of the fact that the miner furnishes his own oil, to supply a cheap and safe illuminant.

Senator Morgan, of Alabama, in a report to the Senate, gives the following as his conception of the importance of the fisheries in their relation to the food supply:

"Nothing could more certainly lessen the food supply of the people, which, after all, is the basis of all human progress, than to promote strife among fishermen visiting the same waters. A policy that leads to such a result is an injustice to the human family. No wealth, national or personal, can be justly earned when it comes from diminishing the supply of human food.

"With all our vast success of cereals and of animal food we still need all the fish we can gather from the oceans and seas for the comfort and economy of living, especially among the industrial classes of our rapidly increasing population. The Atlantic and Pacific fisheries rank in importance along with the production of beef, mutton, and pork as a food supply and as a competitive element in the food markets even of this abundant country." (Mis. Doc. 109, Fiftieth Congress, first session.)

There is no need of multiplying arguments or facts to show the imperative necessity of reconciling all differences and quieting all strife on the basis of a wholesome, uniform system of regulation of the fisheries. Nothing but good can come from the enactment of the present bill.

The contention between the citizens of the various States will then

cease, and all will join together in forcing the ocean to yield to man its share of that which is necessary for his well-being—a bounteous and wholesome food supply.

Senator Soulé, of Louisiana, in a speech to the United States Senate August 12, 1852, eloquently describes the wisdom of such legislation as is proposed:

“The earth, says the Psalmist, was given to the children of men; but the sea is of God alone. The sea is, from its very nature, unsusceptible of human ownership. The idea of ownership implies that of exclusive possession, and, of consequence, the right of using the thing owned at will; and not only that, but the right of excluding others from its possession, and the necessity of so excluding them that the possessor may make his all the advantages it can yield. The sea has none of the characters that could constitute it an ownership of any man or nation. Its immensity, its fluidity must forever prevent its being subject to possession. It may be turned to profit, it is true, but by each and by all of the human species, without its enjoyment by some impairing or diminishing its enjoyment by others.

“Its capacity is incommensurable. There is no volume that can exhaust it. Thousands of fleets may be sunk in it to-day, and to-morrow it will again engulf millions of others without ever being filled or notably compressed. There are no signs, no marks through which to attest its occupancy. Even those frightful though majestic leviathans that now plow it over in all directions leave not behind them any trace of their passage.

“The rolling waves, paddled back as they move on, waft away from its surface the last vestiges of their march.

“To make a thing yours by possession you must possess in continuity the same thing. Identity in the thing owned constitutes one of the main elements of possession. A field, a forest, may be upturned and altered and transformed; they will still be the same field, the same forest. Not so with the ocean, so unceasingly changing in its form, place, and surface, now sinking its upper layers in the utmost recesses of the deep, and then upheaving others from her lowest bed to the surface, as if to spread them to the light of heaven in glorious exultancy.

“Its inexhaustibility renders its exclusive enjoyment not only useless but impossible. You may take from it for years and ages with thousands and millions of men; you may seize upon its pearls, and its corals, and its salts, and its fishes—you but develop its powers of production and multiply the yieldings of the mine from which you draw. By the decrees of God the ocean is of all men. Nations may undertake to explain and interpret those decrees; they can not abrogate them.

“I read in a most lucid and interesting treatise on the right of property, by Comte, that the shores of the sea which formed part of the Roman Empire were considered the property of the Roman people. The use of them was held to be common to all mankind for fishing and navigation purposes, and though the authority of the pretor was necessary to warrant the construction thereon of any buildings, the want of such an authority did not involve the destruction of the works, if not injurious to fishing or navigation or the cause of damage to others, and the sole object of the authority required seems to have been to ascertain and establish the sovereignty of the Roman people over the coasts which formed part of their territories.

“‘The sea and its shores are as common and free to all men as the air itself, and no person can be prohibited from fishing in it.’ So speaks the Roman law, and therefore the Emperor Antoninus, to whom remon-

strances were made against the inhabitants of the Cyclades, who interrupted the navigation of their neighbors, appropriately answered that he was the lord of the land, but that law alone was sovereign over the sea."

Your committee, therefore, in view of the historical, legal, and practical phases of the question which have been carefully considered, and with the conviction that the enactment of this legislation will conserve the general good of all, without injuring even a few, recommend the passage of House bill 5030.

SAML. FOWLER,
EDW. J. DUNPHY,
GEO. W. FITHIAN,
LOUIS E. ATKINSON,
THOS. F. MAGNER,
JOHN H. WILSON.



S. D. SPRINKLE.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 7792.]

The Committee on War Claims, to whom was referred the bill (H. R. 7792) for the relief of S. D. Sprinkle, submit the following report:

The bill authorizes the Secretary of War, through the Quartermaster's Department of the U. S. Army, to investigate the alleged taking of a lot of stores and supplies by United States troops during the late war belonging to S. D. Sprinkle, now of Cass County, Mo.

It seems to your committee that an investigation by the Secretary of War, or under his direction, is a matter of necessity before intelligent action can be had upon this case.

The committee therefore report back the bill and recommend its passage.

FREE DELIVERY OF MAIL IN RURAL DISTRICTS.

MAY 10, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PATTISON, from the Committee on the Post-Office and Post-Roads, submitted the following

REPORT:

[To accompany H. R. 8680.]

The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 6954) to authorize the Postmaster-General to make experiments of free delivery of mail in rural districts, submit the following report:

The committee has received a large number of petitions from the several States asking Congress to extend free delivery of mails to the rural districts. The demand has been so great that we have given the subject full consideration. While free delivery of mails in the country districts is successfully and profitably carried on in many other countries, the expediency of trying it in our own country, because of our sparse population in many sections, is somewhat doubtful, yet the question is one of grave importance to a large majority of our people who live outside of towns and cities. It can readily be understood how greatly benefited this large class of our population will be, and how much they will appreciate these increased facilities. It will bring them in daily touch with the rest of the country and the outside world.

While the committee has doubts as to the expediency of providing free delivery in all the country districts at this time, owing to the probable great expense, we do think it wise to authorize the Postmaster-General to make an experiment in each of the different States of the Union, believing that this is the best way to obtain practical information upon the subject.

The Postmaster-General made experiments in forty-six towns of free delivery during the past year, and the following is his report:

The rural free-delivery experiment is on trial in forty-six communities. In two places (Hillsboro, N. Dak., and Hanover, N. H.) this service was begun, but was discontinued because the postmasters failed to procure responsible carriers for the maximum compensation of \$212 per annum for one or two hours' service per day. In Appendix A appears a tabulated statement showing a total increase of gross receipts in 39 of the 46 experimental free-delivery offices amounting to \$6,213.49, and a total decrease of gross receipts in 7 of the offices amounting to \$707.39. This leaves a balance of \$5,506.10 of increase of gross receipts. This total of excess of gross receipts over expenditures is divided in the appended tables into what is due to natural growth and what is attributable to the free-delivery service. The excess of receipts due to natural growth is obtained by comparing the gross receipts of 1889 with those of 1890 for the same period; and the balance, \$850.50, over and above the additional cost, which is entirely an abnormal increase, is to be attributed to the free delivery.

This astonishing result is arrived at in another and perhaps a clearer way. Between February 1 and September 3, 1891, the 46 experimental offices aggregated 285

months of free-delivery service, at a total cost of carriers of \$4,320.69, and a net profit which may be credited to the free-delivery service of \$850.50. An entire year, aggregating 552 months for these 46 offices, would have resulted, according to the above proportion, in a net earning of \$3,812.54. With an appropriation of \$200,000 for the next fiscal year the net earnings, upon the same basis, would reach \$76,250.80; with an appropriation of \$500,000, the net earnings would be, by the same figuring, \$190,627, and with an appropriation of a million dollars, \$381,254. Of course the implication is that the service would be put on in communities of areas and densities of population similar to those already experimented with.

This is indeed a wonderful showing, especially when it is considered that the establishment of the free delivery causes the patrons of the office in a large measure to discontinue the box-delivery system, and that the office consequently loses to some extent its box rent out of the gross receipts. These patrons would hardly give up their boxes voluntarily if they did not enjoy the better service which comes to them without cost and inconvenience. In the Appendix appear abstracts from the letters of the postmasters where the experimental service has been established. Nearly all speak in the highest praise of it, and they say it meets with the unqualified approbation of their patrons. A few instances where the falling-off of box rents has frightened the short-sighted postmasters are the only exceptions to the general rule. It is easy to be seen, by the communications from postmasters whose gross receipts show a decrease since the establishment of the free delivery, that local causes solely are to be assigned. In some cases the loss was owing to the suspension of establishments of industry, in others to removals, and in still others to a dull season generally. A remarkable phase of the experiment is the increase of pay to the postmaster, which logically follows the increase of service.

The new free-delivery service begins to do away with a service that even now resembles the "neighborly system" of old times, by which users of the mails carried their letters to a single point, there to lie until the beneficiaries of the mails should call for them. As one writer has asked, "Why should the cities have fancy mail service and the old colonial system still prevail in the country districts?" Dwellers in sparsely settled regions have themselves always been trying to get away from this system. What milkman, iceman, groceryman, marketman, that is not made a messenger? How much is the Department charged with the errors of the careless school-boy? In many communities private arrangements with persons whose occupations are more or less public have met with great success. More than all this it may be argued that the duty of the Department does not cease any more in the country, when it has taken a letter upon which the postage is prepaid to a certain point where the addressee may get it if he chooses to go for it, than it does in the city, where the obligation of the Department is not discharged until the mail is delivered to the house door.

But there are a great many detailed reasons in common, everyday affairs, if not in social philosophy, even, why the free-delivery experiment has succeeded and ought to be extended. The rural dweller pays the same rates of postage and has the same right to the common postal facilities that the inhabitant of the city has. Indeed, it is fair to question whether, with his papers and books and packages that he receives, he does not do more postal business than his city cousin does. Often he makes many long, disagreeable trips to the post-office without result. Surely if every trip that he made were to yield him a piece of mail the process would be bad economy, because he would be doing almost as much traveling and would consume almost as much time as a single messenger would in serving the whole neighborhood. His local paper, perhaps his city daily, would come regularly without effort on his part, and his whole home life, his information, his inquisitiveness, his ambition, would be quickened.

The local paper would profit by the change, not only because it would be more generally subscribed for if it came regularly without effort, and because the expense of special carriers would in many cases be done away with, but in dozens of ways, known only to newspaper editors, in the course of the year would its columns be supplied with news matter which, instead of being taken to the office by messenger once a month, would be mailed every week. The large daily in the city, while it would not profit in this second way, would be benefited far more by the accuracy and regularity with which it would be distributed in all quarters of its field; and with the application of the telegraph and the telephone to the postal service the benefits to both these classes of publications would be even more increased, for the supply of news for the city daily, as well as for the country weekly, would be inestimably quickened and cheapened in the course of a year by the injection of the free and special delivery of telegraphed or telephoned letters.

To the business man in the town the extension of the free delivery would be of immense value. I have for years advised young merchants to get into earnest correspondence with persons with whom they would like to do business. It results in more correspondence, and that results in business. I suppose the exact benefit to

the merchant, due to the regularity and dispatch with which mails went out from an office in the city and then went back into it, can not be calculated; but if this regularity and dispatch supplant the irregularity and sloth of the method of delivering and collecting the mails once or twice a week the benefits would surely be incalculable. The country is always tributary to the city; it makes the city. The extension of the postal facilities will make the business man more prosperous and enterprising.

There is a social view of this question which seems to me quite as important as any other. A great deal is said about the desertion of the farm, perhaps by the prosperous tiller of the soil who can afford to rent his land and go to town to live; perhaps by the stalwart son who craves intercourse with people because he does not have it with books and papers, or with people who have them; perhaps by the daughter of the family, who hungers even more for sympathy in her aspiration to be improved. The regular arrival of the paper or magazine, the easier ways to correspond, the general process of sending and receiving things by mail, will not only keep many of the boys and girls at home and make them contented there, but will add to their ambition and their determination to make the old farm pay.

I think the growth of the Farmers' Alliance movement and the other farmers' movements in the past few years has been due to this hunger for something social as much as to anything else; and if, with these possible additions to the literature and the quickened intellectualities may come additions to the already quickened political thought of all the people, who can estimate the benefits to the Republic? I could not commend anything to the attention of Congress with more confidence than this proposed addition to the postal facilities, first, because it is so easy, and, second, because it is so wide-reaching, and, as it seems to me, so patriotic. It has been said that the innovation would be unpopular because it would break up the evening "loaf" at the post-office. There is nothing in the proposition that compels this calamity, beneficial as I think it would be; for the patron of the post-office may still go there for his mail and may idle away his time there if he chooses, and the very fact that he uniformly appreciates the free-delivery convenience in the face of the circumstance that it relieves him of the supposed pleasant necessity of loafing at the post-office is the very best evidence of its utility and popularity.

I have found encouragement beyond all expression for this effort in the almost unanimous support of the press of this country. Of the editorial opinions which have come to the notice of the Department two hundred and fifty-eight favor the extension and nine oppose it. A noticeable thing about them is that many express the surest confidence in ultimate universal free delivery; and while they state the fact that this rural free delivery has been found to be self-sustaining, they insist, in very many instances, that it ought to be extended whether it is self-supporting or not. It is of course evident that, while the free delivery can be extended to immense areas of the country without expense, it is not to be expected that there will not be other areas which will not contribute any profit, and would cause losses. Preference would be given to the districts where loss could not arise.

FREE DELIVERY ON STAR ROUTES.

The combination of free delivery with star contract service is capable of great development through an enlargement of the custom that already prevails to some extent, especially in the far West, where the distances between settlements are great. Congressional authority would have to be procured, as the existing statutes governing contracts for star service would not admit of combining in the Second Assistant's advertisements anything outside of the carriage of closed pouches between post-offices.

According to the custom mentioned, orders authorizing the delivery of mail to the star carrier are deposited with the postmaster, and the carrier delivers the matter as he passes the house, or by putting it into a box conveniently located at the roadside. This system prevails where the contract routes are long and the distances between boxes or deliveries wide apart and risks from thefts very slight. The Congressional authority should be so given as to leave it optional with the Postmaster-General to say where and when the combined service should be advertised for, and then there would be important phases of the combination to be carefully considered.

In remote regions, where the practice is already in vogue, the expense would be inconsiderable. Perhaps the increased business would pay the cost almost everywhere. The capacity and reliability of the pouch mail-carrier would soon become suitable. Letter-carriers are appointed only after an examination to test their fitness for the position. They are also required to give bonds for the proper performance of their duties. No such examination or bond is required of mail-carriers; and an increase in the standard of qualifications, or in the security required of the carriers, would be natural and easy if it were only insisted upon.

In star service the mails are carried in locked pouches between post-offices. If free delivery were combined with the star service much of the mail would necessarily be intrusted in open packages to the carrier. The liability to loss or depredation, it would at first be thought, would be correspondingly increased, and the recovery of lost matter or the detection of depredations more difficult. Not so at all if the dignity and importance of the mail-carriers' work were increased and appreciated.

If free delivery in villages and adjoining communities tends to the increase ofailable matter with the increased receipts mentioned by the Postmaster-General there is certainly every reason to suppose that the increase will be in a much larger ratio in the strictly rural districts. It can hardly be hoped, however, that in the short period of one year in which this experiment is to be tried that a very great increase in the income of the Department will be made, and yet it seems to us quite probable, with the added convenience of receiving and sending letters that free delivery will give to the people of the country, that in a very short time, should it be found expedient to extend it, theailable matter will be greatly in excess of what it is now.

Your committee believe that the result of this experiment by the Postmaster-General will be such that it may demonstrate the practicability and possible profit of a modified free delivery for certain sections of the country, and that the districts where it will prove successful and advisable will rapidly increase in number and extent of business. The plan we know is a new one, and yet the results that may follow are of such importance to the great body of the people that we do not hesitate recommend the enactment proposed.

From the letters and petitions the subcommittee has received, as well as from the addresses made before the full committee by gentlemen claiming to represent the different agricultural societies, it is believed that rural free delivery will aid materially in stopping much of the growing discontent that now seems to exist among the farming population. The adoption of this measure will show a willingness, at least, on the part of Congress to recognize the expressed wishes of the people of the rural districts as being worthy of much consideration. We believe, too, when this experiment is fairly tried, that should the results not be what the people in the country districts and your committee earnestly trust they will be, they as a class will not ask for its permanency unless Congress shall deem it the wise, expedient, and just thing to do.

JAMES REED, JR.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PARRETT, from the Committee on Pensions, submitted the following

REPORT:

[To accompany H. R. 1784.]

The Committee on Pensions, to whom was referred the bill (H. R. 1784) granting a pension to James Reed, jr., have considered the same and report:

The claimant served from June 26, 1838, to December 21, 1838, as ordinary seaman on board the United States ships *Columbus*, *Ohio*, and *Hudson*. In an application for pension, filed at the Pension Bureau February 3, 1887, he alleged that while so serving he incurred a rupture of right side while loading pig iron for ballast.

The Navy Department records show that the claimant was discharged on account of being unfit for service, but the nature of his disability at that time is not stated, and the claimant being unable by reason of the long time which has elapsed since his service to furnish the proof required by the Pension Office, his claim was disallowed. Medical examinations show that he is now afflicted with a double inguinal hernia, and it is shown that he is dependent and helpless. He is now about 74 years old.

Your committee believe the case to be a meritorious one, and the passage of the bill is therefore recommended.

HENRY J. ALVIS.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PARRETT, from the Committee on Pensions, submitted the following

REPORT:

[To accompany H. R. 6279.]

The Committee on Pensions, to whom was referred the bill (H. R. 6279) granting a pension to Henry J. Alvis, have considered the same and report:

The claimant rendered service in Capt. W. H. Mark's company, Louisiana Volunteers, Florida Indian war, and the same has been officially recognized by the allowance to him of bounty land.

In his petition for relief the claimant swears he is 81 years old, the owner of no real estate and with no personal property of over \$200 in value; also that by reason of age and infirmity he can do no labor by which to support himself.

The claimant's reputation for truth and veracity is fully vouched for by the sworn statements of neighbors and acquaintances of many years' standing.

The passage of the bill is respectfully recommended with an amendment, striking out the word "Alabama," in line 7, and substituting in lieu thereof the word "Louisiana."

PLEASANT R. ISRAEL.

MAY 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PARRETT, from the Committee on Pensions, submitted the following

REPORT:

[To accompany H. R. 4049.]

The Committee on Pensions, to whom was referred the bill (H. R. 4049) granting an increase of pension to Pleasant R. Israel, have considered the same and report:

The claimant was a private in Company C, First Indiana Volunteers, and served from June 20, 1846, to December 17, 1846, in the war with Mexico. He is now pensioned at \$8 per month on account of said service.

Dr. David Adams, of Edinburg, Ind., testifies that the claimant is badly afflicted with asthma, bronchitis, and disease of the bowels, and that by reason thereof he is weak and emaciated and wholly incapacitated for the performance of manual labor. The doctor further testifies that the claimant's wife is also in such a bad condition of health as to be unable much of the time to aid the claimant by looking after their household affairs.

Alexander Bruce and Thomas B. Forelander, citizens of Johnson County, Ind., testify that the claimant has no means of support other than his small pension, and that from age and bodily ailments he is wholly unable to support himself by manual labor. It appears that the claimant is now about 66 years old.

In view of the above facts your committee recommend that the bill do pass, with an amendment fixing the rate of pension at \$12 per month.

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AMENDMENT TO SEVENTEENTH ARTICLE OF WAR.

MAY 10, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. OUTHWAITE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 2470.]

The Committee on Military Affairs, to whom was referred the bill (S. 2470) to amend the Articles of War, submit the following report:

Your committee, having considered the same, concur in the report made by the Senate committee, and which is made part of this report, with the exception of that which relates to article 86, which is recommended to be stricken out of the bill by the House committee. This section of the bill provides for the punishment, by impeachment, of civilians for failure to testify before courts-martial, which powers, in the opinion of this committee, should not be vested in courts of strictly military nature. It is the general policy of this Government not to submit civilians to the authority of Army regulations. Where offenses are committed by soldiers in violation of civil laws there is a civil recourse which might be resorted to, and the testimony of civilian witnesses could thus be had. Where the offense of the soldier is only against Army regulations it is questionable whether circumstances will arise of sufficient importance to justify the imprisonment of a civilian for refusing to testify before a court-martial.

Your committee therefore recommend the passage of this bill, amended by the striking out of article 86.

[Senate Report No. 320, Fifty-second Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 2084) to amend the Articles of War, having duly considered the same, recommend the passage of the accompanying substitute.

The bill provides for an amendment of the Seventeenth Article of War, which is now as follows:

“ART. 17. Any soldier who sells or, through neglect, loses or spoils his horse, arms, clothing, or accouterments, shall suffer such stoppages, not exceeding one-half of his current pay, as a court-martial may deem sufficient for repairing the loss or damage, and shall be punished by confinement or such other corporal punishment as the court may direct.”

That part of this Article of War which relates to “stoppages” was intended to meet a different state of facts from that which now exists. Formerly the clothing issued to a soldier was, and remained, the property of the United States, but now he receives a certain clothing allowance and is charged with all that he draws; and if he loses an article of clothing and draws another to replace it, he is charged with the price of the latter, so that the United States suffers no pecuniary loss requiring a stoppage of the soldier's pay to make good. Loss of or damage to public property

is properly assessed by boards of survey under paragraph 781 of the Army Regulations. The proposed amendment to the Seventeenth Article of War simply adapts it to the present state of facts and actual practice.

The amendment made to the Eighty-fourth Article of War consists in inserting the words "except to the judge-advocate," after the words "and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority." The object of this amendment is to adapt the oath which the members of courts-martial are required to take to the provisions of section 2 of this bill. This section very properly excludes the judge-advocate from the secret sessions of the court-martial, but in order that he may record the sentence in the proceedings of the court it is necessary that it shall be communicated to him by the court, and this can not be done without the amendment of the member's oath as proposed.

The present Eighty-sixth Article of War gives to a court-martial the power to punish at discretion any person who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by riot or disorder, but it does not give it the power to punish for contempt a civilian witness who refuses to testify. For this purpose an amendment of the article is necessary, as the absence of this power has been found to be a serious obstacle in the administration of military justice.

The amendment to articles 104 and 110 substantially adapts them to the practice which has always existed. According to the language of the present articles the "whole proceedings" of a court-martial must be approved by the reviewing authority before the sentence can be carried into execution. In adopting this language as to the one hundred and fourth article the compilers of the Revised Statutes introduced a change in the language of the law, which before had only provided that no sentence should be carried into execution until the whole proceedings should be "laid before" the officer ordering the court. All that is necessary is that the reviewing authority should confirm the sentence, and these articles have been amended accordingly.

Section 3 as amended sufficiently and properly provides against fraudulent enlistments, which are the cause of much trouble to the War Department, and should as much as possible be prevented.

Your committee deem it best that the proposed amendment to the Ninety-first Article of War should be omitted, and that the power to administer oaths should be conferred upon certain officers, as provided for in section 4. At present the law is defective in this respect and the cause of much embarrassment in the administration of the affairs of the Army as well as of quite unnecessary expense.

Section 5 has been added to the bill in order to supply an omission in the act establishing summary courts, which failed to give to the proper commanding officers the power to remit or mitigate the sentences of such courts. This was a serious defect and should be remedied.

MILITARY RECORDS OF THE AMERICAN REVOLUTION.

MAY 10, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. OUTHWAITE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 621.]

The Committee on Military Affairs, to whom was referred the bill (S. 621) providing for the collection, custody, and arrangement of the military records of the American Revolution and the war of 1812, submit the following report:

Your committee having had the bill under consideration concur in the report made thereon by the Senate committee, which is also adopted by this committee, with the exception that the words "several executive" be stricken out and the words "Treasury and Interior" be inserted therefor.

This amendment is urged by the State Department for the reason that there are quite a number of records now in the custody of their Department which are purely of an historical nature, and, being consulted largely by historians, your committee are of the opinion that these records should remain in the custody of the State Department, and recommend the passage of the bill as amended.

Ordered that H. R. 8581 lie on the table.

[Senate Report No. 143, Fifty-second Congress, first session.]

The Committee on Military Affairs, to whom was referred Senate bill 621, have duly considered the same and submit the following report:

Your committee referred the bill to the Secretary of War for consideration and report, and received the annexed reply and accompanying letter. The letter of Maj. Davis sufficiently states the reasons in favor of the passage of the bill.

Your committee approve his suggestions of amendment, and recommend that the bill be amended to read as follows, to wit:

A BILL to provide for the collection, custody, and arrangement of the records of the American Revolution.

Whereas the military records of the American Revolution and of the war of eighteen hundred and twelve are now preserved in different Executive Departments of the Government and are not easily accessible; and

Whereas it is important that they should be collected in one Department, where they could be easily consulted and properly indexed and arranged for use: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the military records of the American Revolution and of the war of eighteen hundred and twelve, now preserved in the several Executive Departments, be transferred to the War Department, to be preserved in the Record

and Pension Division of that Department, and that they shall be properly indexed and arranged for use.

Amend the title so as to read: "A bill to provide for the collection, custody, and arrangement of the military records of the American Revolution and the war of eighteen hundred and twelve."

And when so amended your committee recommend its passage.

WAR DEPARTMENT,
Washington, January 20, 1892.

SIR: I have the honor to return herewith Senate bill No. 621, together with a report upon the same by Maj. George B. Davis, Judge Advocate-General's Department, in which I concur, and I remain,

Very respectfully,

S. B. ELKINS,
Secretary of War.

Hon. REDFIELD PROCTOR,
United States Senate.

WAR DEPARTMENT, WAR RECORDS OFFICE,
Washington, January 20, 1892.

SIR: I have the honor to return herewith Senate bill No. 621, providing "for the collection, custody, and arrangement of the records of the American Revolution," with the following remarks:

I believe it to be not only desirable, but extremely important, that the records relating to the American Revolution and the war of 1812 should be gathered together in a single collection and so indexed as to be available for instant reference. The greater part of the War Department records proper were destroyed when the building was burned during the British occupation of the city in 1814. They were in part replaced, however, by accessions from various sources, the most important of which were the Territorial and other commands, which were continued at the close of hostilities in 1815. Other records relating to the above wars were preserved in the State, Interior, and Treasury Departments, but all these collections are fragmentary and incomplete.

Should the proposition be adopted, the result will be to concentrate all the scattered collections in the Record and Pension Division of the War Department, where they will be arranged and indexed in accordance with the system so successfully applied to the records pertaining to the services of the volunteer armies in the war of the rebellion. It is suggested that the measure be restricted in its provisions to the military records pertaining to the wars of the Revolution and 1812, and a copy of Senate bill No. 621, containing such modifications as will accomplish that end, is respectfully submitted herewith.

I am, sir, very respectfully, your obedient servant,

GEO. B. DAVIS,
Major and Judge-Advocate, U. S. Army.

Hon. S. B. ELKINS,
Secretary of War.

PROMOTION OF ENLISTED MEN OF THE ARMY.

MAY 10, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. OUTHWAITE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 1722.]

The Committee on Military Affairs, to whom was referred the bill (S. 1722) to provide for the examination and promotion of enlisted men of the Army to the grade of second lieutenant, submit the following report:

Your committee, having considered this bill, indorse the report of the Senate, which is made a part hereof.

This bill received the approval and recommendation of the Secretary of War, the Adjutant-General, and the Major-General Commanding the Army, and it is their unanimous opinion that the passage of such a measure would be of great benefit to the service, and your committee therefore recommend that the bill do pass.

[Senate Report No. 268, Fifty-second Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 1722) to provide for the examination and promotion of enlisted men of the Army to the grade of second lieutenant, having duly considered the same, recommend its passage after it has been amended as herein indicated.

This bill authorizes the President to prescribe a system of examination of enlisted men of the Army by such boards as he may establish, to determine their fitness for promotion to the grade of second lieutenant. In the Annual Report of the Secretary of War for the year 1890 is the following:

"I would recommend a change in the law relative to the selection of enlisted men for appointment to the grade of second lieutenant. The act of June 18, 1878, providing for the promotion of meritorious noncommissioned officers, makes a favorable recommendation from a company commander an essential qualification for examination. This requirement, to a great extent, defeats the purpose of the statute by making the privilege depend absolutely upon the discretion of the officer for the time being in command of the company. For example, a man in the opinion of one company commander entitled to advancement might be regarded by another as below mediocrity. Men serving with captains who hold high standards may be infinitely superior to comrades recommended for promotions from other organizations, the result being that the advantages of the law may be withheld from men entitled to more consideration than many of the successful competitors.

"Practically it is now possible for company commanders to give the valuable appointments to young men who have enlisted for that sole purpose and who have not rendered any meritorious service, except to qualify for the examination, thus excluding bona fide soldiers who have been induced to enlist in the hope of obtaining hard-earned and legitimate promotion. The present system gives a great opportunity for favoritism. Doubtless there have been cases of it, and there is danger that the abuse may become a very serious one.

"In order to insure exact justice to all and give full effect to the beneficent purpose of Congress, the initiatory step should be with the men themselves. Any enlisted

man of two years' service, who is a citizen of the United States, should, under certain fixed rules, be permitted to compete for a commission. By this means the operation of the law would be made absolutely impersonal, and every man entering the Army would be impressed with the fact that he had an exact and even chance for a commission. This information extensively disseminated would, it is hoped, further recommend the Army to desirable men."

Your committee referred the bill to the Secretary of War for information and report and received in reply the following letter, report, and indorsement:

WAR DEPARTMENT,
Washington, February 10, 1892.

SIR: I return herewith Senate bill 1722, Fifty-second Congress, first session, "To provide for the examination and promotion of enlisted men of the Army to the grade of second lieutenant," which was referred to this Department on January 28, 1892, and beg to invite your attention to the inclosed report of the Adjutant-General of the Army, dated the 2d instant, whose views are concurred in by the Major-General Commanding the Army.

Very respectfully,

S. B. ELKINS,
Secretary of War.

The CHAIRMAN OF THE COMMITTEE ON MILITARY AFFAIRS,
United States Senate.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, February 2, 1892.

SIR: I have the honor to return herewith Senate bill No. 1722, "To provide for the examination and promotion of enlisted men of the Army to the grade of second lieutenant," and to report thereon as follows:

The state of the present law (act of January 18, 1878) in regard to the selection of enlisted men for appointment to the grade of second lieutenant is unsatisfactory, inasmuch as this valuable privilege depends upon a favorable recommendation from a company commander and is confined exclusively to the noncommissioned officers. The practical result is that many young men enlist for the sole purpose of obtaining commissions, and in accordance with a prearranged scheme, they secure the necessary warrant and recommendation without any particular merit on their own account, and are brought forward to the exclusion of bona fide soldiers who have been induced to enlist in the hope of obtaining hard-earned and legitimate promotion. This bill will insure exact justice to all concerned, for under its provisions the initiative will lie entirely with the men. Not only noncommissioned officers, but every soldier, will, under certain well-defined limitations, have the privilege of making public declaration of his ambition and be given an opportunity to establish his claim to recognition.

The provisions of the accompanying bill are so general in scope and effect as to leave very much of the purely administrative details within the control of the President, by which means such minor rules may be formulated as seem best adapted to the end in view.

By the bill the functions of the boards authorized would be in the highest degree important, as the claims of all kinds of applicants would have to be inquired into and exhaustive examinations made into the moral antecedents and general fitness of candidates. The boards are, therefore, very properly endowed with judicial functions, as set forth in section 2.

The bill, if it becomes a law, will inspire belief that a way for the advancement of enlisted men will be obtained without partiality or favoritism, and thereby induce the enlistment of well-educated and adventurous young men, stimulated by the hope that courage in well-doing and address may enable them to improve their condition. I take great satisfaction in recommending this measure for favorable consideration, as I believe it would prove of the greatest possible advantage to the interests of the service.

Very respectfully, your obedient servant,

J. C. KELTON,
Adjutant-General.

The SECRETARY OF WAR.

[Indorsement.]

HEADQUARTERS OF THE ARMY,
Washington, February 9, 1892.

Respectfully referred to the Secretary of War.

I concur with the Adjutant-General in his views respecting the merits of this measure (S. 1722, Fifty-second Congress), and recommend it to your favorable consideration.

J. M. SCHOFIELD,
Major-General Commanding.

Your committee recommends that the bill be amended by striking out in section 3 the words:

“And all who can not be appointed second lieutenants shall, at any time during the year subsequent to their examination, if they shall so elect, receive an honorable discharge and one year's pay and allowances of the grade occupied at the date of discharge.”

IMMEDIATE TRANSPORTATION OF DUTIABLE GOODS.

MAY 11, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. MALLORY, from the Committee on Interstate and Foreign Commerce,
submitted the following

REPORT:

[To accompany S. 1952.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1952) entitled "An act to amend an act entitled 'An act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes,' approved June 10, A. D. 1880, by extending the privileges of the seventh section thereof to the port of St. Augustine, Fla.," having considered the same, recommend that it pass.



SILK CULTURE IN THE UNITED STATES.

MAY 11, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LONG, from the Committee on Agriculture, submitted the following

REPORT:

[To accompany H. R. 8704.]

The Committee on Agriculture having had under consideration H. R. 64 and H. R. 3520, for the development and encouragement of silk culture in the United States under the supervision of the Secretary of Agriculture, beg leave to report that they have carefully examined the same and herewith submit a substitute with the recommendation that it do pass.

The demand for the encouragement of silk culture comes up very generally from the farming communities, there being upon file with this committee petitions from granges and other agricultural organizations representing many hundred thousand people.

The Government has already expended considerable money in a desultory and unmethodical way in experiments at reeling silk and disseminating information as to the rearing of mulberry trees and the production of silk, but the time seems now to have come when experimentation should give place to actual results, and your committee have thought proper to give this work into the hands of the Secretary of Agriculture, who is authorized to clothe five agricultural colleges with power and resources to develop the industry, distribute mulberry seeds and trees, silkworm eggs, and by practical demonstration prove to the public that raw silk can be profitably produced in the United States. As a matter of history your committee herewith adopt an address delivered before the full committee by Prof. Joseph Neumann, the pioneer silk culturalist of the United States, and as a duly accredited representative of this great industry. Prof. Neumann said:

In the remarks which I intend to make I will confine myself to the bill introduced by the gentleman from Texas, Mr. Long, on the subject of silk culture. I have contended for many years that sericulture should be recognized and aided in this country by Congress, and in order to prevent speculation, and to see that it should be properly carried out, I advocate the bill now pending before you. From time immemorial silk culture has been attempted in the colonies, as far back as two hundred and forty-eight years ago. It was attempted in the United States from 1816 forward to 1844, known as the *Multicaulis* speculation. We had a speculative element represented in the business in California in the years 1868, 1869, and 1870. This matter culminated in the destruction of the prospect for the development of this particular branch of industry. People were induced to make investments, and things necessary for a beginning of the business were put up to the highest price possible. The result was that the people engaged in it could not get rich as fast as they expected and became discouraged. They were told by the agents of the foreign producer that it was impossible for America to compete and they gave it up. They said: "It belongs to Europe, and it can not be done in this country. We have too much wages to pay in proportion to what Europe pays." But this is not so. It is an essential class of work in agriculture, and while it is easy work it requires proper climatic conditions.

There was one mistake made by Congress in the first revision of the tariff, at the beginning of the civil war, which put raw silk on the free list (while manufactured silks carried a duty). Previous to this manufactured silk paid 25 per cent and raw

silk 15 per cent ad valorem. If the duty had been continued at 15 per cent the enterprise to-day would have been on a better footing. You are partially aware of the fact that by a continuous perseverance for nearly thirty years, sacrificing the best days of my life, my best efforts have been given to this particular industry. I had hoped that you would have been convinced of the fact by this time that if we are encouraged to become producers of silk we will be able to undersell European and Asiatic producers. The beginning of the industry is the feeding of the silkworm, and the foundation for this is the cultivation of the soil and the planting of the mulberry tree, as said trees furnish the necessary food for the silkworm.

In climates where it is possible for the silkworm to be fed early in the spring, where there are no more late frosts to be feared, it can only be carried on profitably. Where this is the case its success is assured (and I could give instances which have come under my observation), for we have within the limits of the United States territory capable of producing ten times as much silk as Europe and Asia combined.

I can assure you that if a beginning is made now it will grow. The silk-culture belt begins with southern Virginia, southern Tennessee, North Carolina, South Carolina, Florida, Texas, Alabama, Mississippi, Louisiana, New Mexico, Arkansas, Arizona, California, and up to Jackson County, Oregon. In other parts of the Union it is impossible to produce enough silk to remunerate the labor employed.

Beginning where the climate is favorable, it will only take about twenty-five years for us to produce more silk than the balance of the world.

There is plenty of land in the silk-culture belt which every inhabitant may own, while in Europe and Asia the people who have to do the work do not own the land. The cultivation there is done on the large plantations owned by the few. The poorer people occupy rooms 10 by 10, and often smaller, and about 6 feet high, and they have to clean out their rooms in the spring in order to make space for the silkworms. The owner of the land practically gets most of the crop. He supplies them with enough eggs to fill the room and leaves for food and takes half the crop for his remuneration.

In this country, for the next five hundred years, every inhabitant of the United States who would be able to get a small farm of 25 acres will be able to devote 2 or 3 acres to the cultivation of mulberry trees, which would realize him \$150, and with the help of his wife and children he would make \$250 to \$400 out of it.

An early beginning, an early spring, and a late fall is necessary.

The people owning large tracts of land and who undoubtedly would be willing to plant 500 acres, more or less, and will build large cocooneries in which the temperature can be regulated, large crops can be produced and the expenses will not exceed 10 to 15 per cent of the value of the crop. I predict that it would not be fifteen years from the time a proper beginning is made that this country will produce enough raw silk to supply our own spindles and looms.

The bill provides an appropriation of \$30,000 for the establishment of five stations and putting the work fully under way.

For eight months ending February 28, 1891, there was imported to the United States 2,980,635 pounds of raw or reeled silk free of duty. During the same period, to February 29, 1892, there was imported to the United States through the regular channels, free of duty, 5,186,390 pounds of raw or reeled silk.

For eight months ending February 29, 1892, there was imported under a duty averaging 50 per centum ad valorem \$21,697,485 worth of manufactured silks, and to that date for a period of twelve months there was imported \$33,159,404 worth of manufactured silks. On this the United States paid a total duty of \$16,579,702.

During the period of twelve months ending December 31, 1891, there was of cocoons, raw and waste silks, imported free of duty \$24,183,372 worth, making a total of \$40,763,074, paid for raw silks and as duty on such goods imported, annually going out of this country.

The people of the United States annually send abroad for about \$200,000,000 worth of silk goods of all kinds, while those who would be producers are deprived of a corresponding amount, less the cost of production.

The bill herewith presented results from a general demand from the people, and your committee respectfully report it with a favorable recommendation, and that H. R. 64 and 3520 do lie on the table.

WARREN HALL.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 789.]

The Committee on War Claims, to whom was referred the bill (S. 789) for the relief of Warren Hall, submit the following report:

The facts out of which this bill for relief arise will be found stated in Senate report from the Committee on Claims of the present Congress, which report is annexed as a part of this report.

Your committee adopt the said report as their own and recommend the passage of the bill.

[Senate Report No. 390, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 789) for the relief of Warren Hall, after due consideration report as follows:

This bill was considered by your committee in the Fiftieth Congress, and a favorable report made thereon, after which it passed the Senate. It was favorably reported in the House in the first session of the Fifty-first Congress, and also at this session. There are no new facts in the case. Your committee concur in the report made by Mr. Hoar in the Fiftieth Congress and make it a part of this report, and recommend the passage of the bill.

[Senate Report No. 2462, Fiftieth Congress, second session.]

The Committee on Claims, to whom was referred the bill (S. 902) for the relief of Warren Hall, have considered the same and respectfully report:

Warren Hall, the claimant, alleges that he is the son of a free woman, an Indian, and that he was born in the city of Alexandria; that when a youth he was kidnapped in New Orleans, where he had gone as a race-rider, and sold to a planter in Mississippi by the name of Roach, by whom he was treated until 1863 in some respects as a free man and in others as a slave. Hall further claims that during this period he was allowed to raise hogs and other stock, which he exchanged with Roach for cotton, and in this way he had accumulated some 75 or more bales of cotton. In the year 1863 sundry lots of cotton along the Mississippi were seized by the United States troops, to be used in the fortification at Memphis. This cotton was sold at a later date and the proceeds placed in the United States Treasury. In this cotton thus taken, used, and sold were the bales Hall claims which he had received in exchange for his hogs by contract with Roach, and of which he was the lawful owner.

Hall endeavored to assert his right of ownership by application to the Quartermaster-General and by suit in the Court of Claims and in the Supreme Court of the United States, but without success, the courts holding that his condition in fact was that of a slave, and that in consequence he was incapable of making contracts or of acquiring property.

It would seem to your committee that under these facts injustice is done to Hall by enforcing the harsh rule of slavery in his case. If the story of his birth be true he was by law freeborn and his mother was a free woman, and her legal status would determine his. His servitude, therefore, was the result of force and not of law. He was still a free man, although unable to assert his freedom.

The bill under consideration is intended to refer the entire case to the Court of Claims, removing simply the bar of limitation and the hitherto insuperable bar of so-called "*slavery de facto*." Hall then would be allowed to prove his free birth, the contract with Roach, and his title to the property, if possible.

Some questions have been raised, in the course of the investigation, as to the good faith and genuineness of Hall's claim. All these questions will be passed upon by the court if the proposed statute be enacted, and the burden will be upon him to establish his title in all respects.

Your committee recommends, therefore, the passage of the bill, with the following amendment: In line 8, after the word "trial," insert "if it shall appear that said Hall was in fact freeborn he shall be deemed to be entitled to all such rights as he would have had if he had continued a free man, notwithstanding he may have been reduced to a state of slavery *de facto* by the operation of the laws of any State."

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RICHARD P. BLACKISTONE.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. WINN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 223.]

The Committee on War Claims, to whom was referred the bill (H. R. 4291) for the relief of Richard P. Blackistone, submit the following report:

It seems to your committee that an investigation by the Court of Claims is a matter of necessity before intelligent action can be had upon the case, and your committee report herewith a resolution referring the case to the Court of Claims for a finding of facts under the provisions of the act of March 3, 1887, commonly known as the "Tucker act," and recommend its passage.

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REFUND OF CERTAIN MONEYS COLLECTED BY THE UNITED STATES.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. WINN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 1539.]

The Committee on War Claims, to whom was referred the bill (H. R. 1539) to authorize the Secretary of the Treasury to refund certain moneys collected by the United States, submit the following report:

The history of the claim is fully set forth in a letter from the acting Secretary of the Treasury under date of March 4, 1892, hereto annexed and made a part of this report.

Your committee report back the bill and recommend its passage with the following amendment:

At the end of line 28 insert "out of any money in the Treasury belonging to the captured and abandoned property fund."

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., March 4, 1892.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th ultimo, inclosing House bill 1539, "to authorize the Secretary to refund certain moneys collected by the United States," and inquiring, as the member of the War Claims Committee to whom said bill has been referred, whether the sums therein mentioned have been in fact received by the authorities of the United States under the circumstances mentioned, and whether the amounts credited to the several beneficiaries named therein are correct, and, if not, to inform the committee what sum or sums appear on the books and accounts of the Treasury Department to the account of the individuals mentioned." You also ask "for any further information as to these funds that may be in the knowledge of the Department and that may bear upon the subject-matter of the inclosed bill."

In reply I have the honor to say that the several plantations and pieces of property from which the sums of money mentioned in said bill were derived were seized under the provisions of the act of July 17, 1862 (12 Stat., 589), and the act of March 12, 1863 (12 Stat., 820), and the act of July 2, 1864 (13 Stat., 375).

The regulations issued by the Secretary of the Treasury under these acts are to be found on pp. 81, 111, and 118 of a pamphlet containing "Acts of Congress and Rules and Regulations prescribed by the Secretary of the Treasury, in pursuance thereto, with the approval of the President, concerning commercial intercourse with and in States and parts of States in insurrection, captured, abandoned, and confiscable property, the care of freedmen, and the purchase of products of insurrectionary districts on Government account," a copy of which is herewith transmitted.

Under these regulations Benjamin F. Flanders was appointed supervising special agent of the Treasury Department, and as such had control of certain plantations and pieces of property in Louisiana, including those mentioned in said bill H. R. 1539, which were reported by the Secretary of War as seized and turned over to the Treasury Department, as will be seen by reference to Ex. Doc. No. 102, House of Representatives, Fortieth Congress, second session,

From a careful reëxamination of the accounts of said B. F. Flanders, now on file in this office, it appears that the sums of money received by him and turned over to the Treasury Department, referred to in said bill, were as follows:

From the Ellis plantation, Terrebonne Parish, La.; reputed owners, T. & T. Ellis.....	\$3, 916. 31
Bronson & Hopkins plantation, Terrebonne Parish; reputed owners, Bronson & Hopkins.....	2, 125. 51
Mayronne plantation, St. Charles Parish, La.; reputed owners, Mayronne Brothers.....	25, 082. 71
From houses, lands, and tenements in New Orleans, La.; reputed owners:	
Loyd R. Coleman and wife.....	164. 82
Benjamin F. Story.....	4, 732. 61
Sidney Story.....	3, 958. 16
Norman Story.....	2, 915. 30
John Slidell.....	6, 298. 47

It is respectfully suggested that the last sentence of said bill should be made to read as follows: "And a sum sufficient to pay the same is hereby appropriated out of any money in the Treasury not otherwise appropriated, and to be charged up to the captured and abandoned property fund."

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

Hon. THOMAS E. WINN,
Of War Claims Committee, House of Representatives.

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WILLIAM HANCOCK.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8551.]

The Committee on War Claims, to whom was referred the bill (H. R. 8551) entitled "A bill for the relief of William Hancock, administrator of the late David P. Hancock," report:

David P. Hancock served in the U. S. Army as a cadet at the West Point Military Academy for about five years next preceding July 1, 1854, when he was commissioned second lieutenant, Seventh Infantry, U. S. Army, and served in said Army continuously as a commissioned officer till May 21, 1880. During all the time he thus served as a commissioned officer the following provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per cent of their current yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services in the said interval of time from July 1, 1854, to May 21, 1880, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of service of about five years in the U. S. Army at the Military Academy. For this reason it is alleged he was short-paid for his services, as a commissioned officer, rendered during said interval of time from July 1, 1854, to May 21, 1880, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$2,000, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim, which is for a balance of wages for military services; it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

FRANCIS DOWNS.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8669.]

The Committee on War Claims, to whom was referred the bill (H. R. 8669) entitled "A bill for the relief of Francis Downs, executor of William Craig," report:

William Craig served in the U. S. Army as a cadet at the West Point Military Academy for four years prior to July 1, 1853, when he was commissioned second lieutenant Third Infantry, U. S. Army, and served therein continuously as a commissioned officer till April 5, 1864. During all the time he thus served as a commissioned officer the following provision of law was in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

He was paid for his services in the said interval of time from July 1, 1853, to April 5, 1864, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval on account of his said prior length of service of about four years in the U. S. Army at the Military Academy. For this reason it is alleged he was short-paid for his services as a commissioned officer, rendered during said interval of time from July 1, 1853, to April 5, 1864, or in about four-fifths thereof, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$700, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

MARGARET JANE LOVELL.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8374.]

The Committee on War Claims, to whom was referred the bill (H. R. 8374) entitled "A bill for the relief of Margaret Jane Lovell, administratrix of the late Charles S. Lovell," report:

Charles S. Lovell served in the U. S. Army as an enlisted man and noncommissioned officer from December 30, 1830, to October 13, 1837, and as a commissioned officer in said Army from July 5, 1838, to July 15, 1870. During the time he thus served as a commissioned officer the following provision of law was in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838).

He was paid for his services in the said interval of time from July 5, 1838, to July 15, 1870, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of services in the U. S. Army as an enlisted man. For this reason it is alleged he was short-paid for his services rendered as a commissioned officer during the interval of time from July 5, 1838, to July 15, 1870, partially in the suppression of the late rebellion, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$4,000, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services rendered by a distinguished officer); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of her claim if she can.

The committee recommend that the bill do pass.

JUANITA HOWLAND.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8670.]

The Committee on War Claims, to whom was referred the bill (H. R. 8670), entitled "A bill for the relief of Juanita Howland, administratrix of the late George W. Howland," report:

George W. Howland served in the U. S. Army as a cadet at the West Point Military Academy for four years next preceding July 1, 1848, when he was commissioned second lieutenant, Mounted Rifles, U. S. Army, and served in said Army continuously as a commissioned officer till April 8, 1869. During all the time he thus served as a commissioned officer the following provision of law was in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

He was paid for his services in the said interval of time from July 1, 1848 to April 8, 1869, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of service of about four years in the U. S. Army at the Military Academy. For this reason it is alleged he was short-paid for his services, as a commissioned officer, rendered during said interval of time from July 1, 1848, to April 8, 1869, or in about four-fifths thereof, and the passage of this bill is requested, the sole object of which is to remove any statutory limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$1,500, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim, which is for a balance of wages for military services. It only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of her claim if she can.

The committee recommend that the bill do pass.

GERALD RUSSELL.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8674.]

The Committee on War Claims, to whom was referred the bill (H. R. 8674) entitled "A bill for the relief of Gerald Russell," report:

Gerald Russell served as an enlisted man and noncommissioned officer in the U. S. Army from July 21, 1851, to July 17, 1862 (almost continuously), and in said Army as a commissioned officer from July 15, 1862, to June 18, 1878. During the time he thus served as a commissioned officer the following provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per centum of their current yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services in the said interval of time from July 15, 1862, to June 18, 1878, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of services in the U. S. Army as an enlisted man. For this reason it is alleged he was short-paid for his services rendered, as a commissioned officer, during the interval of time from July 15, 1862, to June 18, 1878, partially in the suppression of the late rebellion, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$4,500, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim, which is for a balance of wages for military services; it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

RICHARD W. JOHNSON.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8553.]

The Committee on War Claims, to whom was referred the bill (H. R. 8553) entitled "A bill for the relief of Richard W. Johnson," report:

Richard W. Johnson served as a cadet in the U. S. Army at the West Point Military Academy for about five years prior to July 1, 1849, when he was commissioned second lieutenant, Sixth Infantry, in the U. S. Army, and served therein continuously till February 24, 1881. During all this time he was thus commissioned the following two provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per centum of their yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services while thus serving as a commissioned officer in the U. S. Army merely what other officers of his grade were generally paid, and allowed no increase of compensation whatever on account of his prior length of service in the U. S. Army of the duration of about five years at the Military Academy. For this reason it is alleged he was short paid for his services rendered during the time he was a commissioned officer as aforesaid, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists, or may exist, to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$2,000, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services rendered by a distinguished officer); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim, if he can.

The committee recommend that the bill do pass.

ESTATE OF FRANCIS E. HARDING ET AL.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. WINN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 224.]

The Committee on War Claims, to whom was referred the bills (H. R. 7746, 7711, 7911, and 6055) for the relief of the estate of Francis E. Harding, Mary H. Anderson, widow of Hiram Anderson, Mrs. Frank Deslonds, and Sidonie Delahoussage, have had the same under consideration and beg leave to report as follows:

Your committee are of the opinion that these claims should be referred to the Court of Claims for findings of fact, and report herewith a resolution to that effect and recommend its adoption.



EMILY MURDOCK.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PICKLER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8558.]

The Committee on War Claims, to whom was referred the bill (H. R. 8558) entitled "A bill for the relief of Emily Murdock, administratrix of the late Daniel H. Murdock," report:

Daniel H. Murdock served in the U. S. Army as an enlisted man from August 30, 1862, to October 5, 1864, and in said Army as a commissioned officer almost continuously from October 5, 1864, to June 18, 1878. During the time he thus served as a commissioned officer the following provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services in the said interval of time from October 5, 1864, to June 18, 1878, merely what other officers of his grade were paid generally, and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of services in the U. S. Army as an enlisted man. For this reason it is alleged he was short-paid for his services rendered as a commissioned officer during the interval of time from October 5, 1864, to June 18, 1878, partially in the suppression of the late rebellion, and the passage of this bill is requested, the sole object of which is to remove any statutory limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$900, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of her claim if she can.

The committee recommend that the bill do pass.

SILVER-LEAD ORES.

MAY 11, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WHITING, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany H. R. 561.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 561) to amend section 199, Schedule C, of the act of October 1, 1890, submit the following report:

By this bill it is sought to remove the duty imposed upon silver-lead ores by the tariff of October 1, 1890. Silver ores containing lead are known as "flux ores," and silver ores containing no lead are called "dry ores." The Mexican silver-lead ores have been imported for a number of years on account of their usefulness in smelting dry ores, and, as a rule, 1 ton of such Mexican lead-silver ore has supplied the flux quality of 2 tons of dry silver ores.

In the smelting of silver ores in the United States, where lead-silver ore is principally used as a flux, such lead-silver ores usually bear little or no smelting charge, on account of the fact that they are necessary to the smelting of dry ores, and this smelting free of charge of the former ores is assessed upon the smelting charge made on dry ores. When it is understood that nearly 75 per cent of the product of the silver mines of the United States is dry ore, and that even when Mexican lead-silver ores came in free, this class of ores has been smelted by American works without any charge, or a very insignificant one, it can be readily appreciated that any reduction in the supply of lead-fluxing ores must involve great hardship to the producer of dry ores, as well as to the smelter. Mexico is the only country from which we receive any considerable quantity of these lead-silver ores, and it was against their importation that the duty imposed on lead in silver ores, by the tariff act of 1890, was chiefly directed.

The cost of shipping 1 ton of Mexican ore from Monterey to New York by rail would be, approximately, \$15; whereas by way of Tampico, on the Mexican Gulf, and vessel, the rate is in effect \$12 per ton on lead bullion. Giving, however, the same rate of freight to ore and bullion, *i. e.*, \$12 per ton, the following facts are developed:

The average contents of a ton of lead-silver ore in lead is 25 per cent. One ton of ore, therefore, contains 500 pounds of lead. The smelting process produces about 90 per cent of this, *i. e.*, 450 pounds. At the rate of \$12 per ton freight to New York, the cost on 450 pounds would be \$2.70. It will be remembered that the duty on lead in pigs and bars is 2 cents a pound; therefore this lead bullion, *i. e.*, 450 pounds produced from 1 ton of ore, would pay \$9 duty upon entry into the United States,

making, therefore, the cost of delivery in New York, and duty, \$11.70. On the other hand, the cost of transporting 1 ton of ore to New York, as stated, would be \$12; that is to say, the cost of delivery of 1 ton of ore, without any duty upon entry into the United States, is greater than the cost of delivering the contents of that 1 ton of ore in New York, and paying 2 cents per pound on the lead which was originally contained in the ore. In other words, the concentration on tonnage by the smelting process saves so much freight (in this case about 75 per cent) that such freight-saving overcomes the duty imposed on lead bullion.

From what has been stated, it is clear that the duty imposed on lead ores is simply an obstruction and barrier to the American user of Mexican ores in competition with the Mexican smelting works. In other words, the tariff act of 1890 assists Mexican smelting works in their competition against American smelting works, and injures the great majority of the silver miners of this country by rendering scarce a flux ore which must be used to reduce the products of their mines.

As soon as the bill taxing lead in silver ores was introduced, American smelters who had been importing Mexican ores, and also Mexican capitalists who had watched this legislation, made every preparation to erect smelting works in Mexico when the duty had been decided upon by the American Congress. The result was that almost immediately after the duty went into effect smelting in Mexico began, and there were erected two smelting works at Monterey, on the Mexican national road. These two smelting works consumed tons of lead-bearing ores which previously had been going into the United States by the way of Laredo and Eagle Pass, and while no lead ore came in as heretofore through those two points, there came instead the concentrated substance, the result of smelting, *i. e.*, lead bullion. While before the passage of the act of 1890 little or no smelting was done in Mexico, since its enactment works have been erected costing nearly \$5,000,000 and capable of reducing from 1,000 to 1,200 tons of ore per day.

The imposition of a duty upon silver-lead ores was regarded by Mexico as an unfriendly act, and the Mexican Government at once retaliated by increasing her duties upon our agricultural products; for while our sister Republic had really been the only one benefited by the duty, she realizes that, in passing the law, it was our purpose to injure her, and resents it accordingly.

It will be seen from what has been stated that the abrogation of this duty, which is sought by this amendment, will be in the interests of the American manufacturers by giving them free raw material; will be in the interest of the dry-ore miners, representing 75 per cent of the mining industry in the United States, by increasing the supply of flux ore and thus cheapening the cost of reducing their product; will be in the interest of the American railroads, which gives employment to large numbers of laborers, by the increasing of their freight traffic, and will remove one of the principal barriers which now prevents a free commercial intercourse between this country and Mexico.

For these reasons your committee recommends the passage of the bill.

VIEWS OF THE MINORITY.

The majority of the committee advise the abolition of the duties on lead ore for two reasons: First, because the American miner needs this ore to smelt his own with, and second, because it would be so grateful to Mexico. The first reason is business. The second reason is philanthropy, and both happen to be false.

The American miner does not need the ore for a flux, and if he does, does not get it under the present system, nor under the free raw material system, which prevailed before the last tariff act. This can be proven by the nature of things, as well as by statistics.

The argument of the majority goes on the idea that Mexican ores are different from American ores; that while all the mountain and mineral characteristics of the United States and Mexico are the same, while the same range of mountains runs through both, that at the boundary of Mexico all these things change, and we are then in a land of flux ores made by nature for the purpose of fluxing American dry ores, and only kept from doing so by the unwisdom of protectionists whose hearts are hardened against free raw materials.

Has anybody attempted to prove this? By no means. It all rests on assertion, and applied assertion at that. Happily the very contrary of this can be proved by Government returns. In the year 1890, the very year of the last tariff bill, the amount of silver ore admitted into the United States, substantially all from Mexico, was 216,000,000 pounds, containing 16.98 per cent of lead. The next year, 1891, the present tariff being in force, the importation rose to 271,000,000 pounds, bearing 15.60 per cent of lead. Now, the majority themselves state in this very report that lead ores such as they wish for "free raw material" contain 25 per cent, and they have understated it. These figures, so simple that they are not open to the objection of being statistics, and therefore lies, show conclusively what everybody knows, that the Mexican ores are like the American ores, both dry and flux; and the proportion of lead ore contained in the imported Mexican ores, both before and after the last tariff, shows that the imported Mexican flux ores are not enough to flux the imported Mexican dry ores.

Mr. Meyer, an expert on the other side, who testified before the Ways and Means Committee of the Fifty-first Congress, declared then that 20 per cent of lead was necessary to flux a ton of ore. All the imported Mexican ores had less than 17 per cent, and, therefore, not enough to flux themselves. The truth is, the American miner is not back of this thing. Back of it is the American free trader, who yearns not for "free raw material," but for the rawest kind of Mexican 50 cents a day labor.

The second reason for the proposed change is a philanthropical desire to benefit Mexico. Unfortunately the argument of the committee shows that Mexico would be injured by the proposed change. The committee say that in consequence of our recent tariff, \$5,000,000 have been invested in smelters in Mexico. That this fact should be regarded as a misfortune to Mexico, by reformers, we can easily judge from the feel-

ing they have against our own manufacturers; but why, after having forced Mexico to invest \$5,000,000 in smelters, it should be considered philanthropic to abolish them, by repealing the law which created them, nobody but a tariff reformer can understand. That such a course would conciliate Mexico seems hardly probable. A man hit on one side of the head has rarely been conciliated by being hit on the other.

The only remaining argument presented by the committee is that under the existing tariff lead can be so sent from Mexico to New York that all the lead ore will be smelted in Mexico. All the suggestions given are deceptive, from the assumption that a valuable commodity like lead should bear the same weight of transportation as the comparatively worthless ore, to the assumption that all the lead will be wanted in New York. In fact, lead is wanted mostly elsewhere, and the figures already given show how false such assumptions are; 217,000,000 pounds of ore came in in 1890, mostly over the Mexican border. Instead of diminishing, the next year, under the new tariff, the importation rose to 271,000,000 pounds. Facts are more valuable than conjectures. Our mining industries ought to be protected and fostered. They employ labor which would otherwise be idle. They set in motion some of the acutest intellects on this continent; they draft into the service of the country a vast body of pioneers who act as the advance guards of civilization through the extreme West. The country owes it to such men as well as to itself, that while they are adding to the wealth of all, and pushing on the outposts of settlement, they may not be overwhelmed by a competition with those who can work for little or nothing, because not sufficiently advanced in civilization to have civilized wants and necessities.

T. B. REED.

J. C. BURROWS.

S. E. PAYNE.

JOHN DALZELL.

A. J. HOPKINS.

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ULGER V. BADEAUX AND OTHERS.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CLANCY, from the Committee on War Claims, reported the following

REPORT:

[To accompany Mis. Doc. No. 225.]

The Committee on War Claims to whom were referred the bills (H. R. 6208, 3249, 7805, and 1963) for the relief of Ulger V. Badeaux, Alphonse Desmane, W. W. Edwards, and Clarissa Bishop respectfully report that the same be referred, together with all accompanying papers, to the Court of Claims, under the provisions of the act of Congress "to provide for the bringing of suits against the Government," approved March 3, 1887.



LOUIS H. BRISTOL.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CLANCY, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8656.]

The Committee on War Claims, to whom was referred the bill (H. R. 8656) entitled "A bill for the relief of Louis H. Bristol, administrator of Albemarle Cady," report:

Albemarle Cady served in the U. S. Army as a cadet at the West Point Military Academy for about four years prior to July 1, 1829, when he was commissioned second lieutenant, Sixth Infantry, in the U. S. Army, and served therein continuously as a commissioned officer till February 24, 1881. During all this time he was thus commissioned the following two provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services while thus serving as a commissioned officer in the U. S. Army merely what other officers of his grade were generally paid, and allowed no increase of compensation whatever on account of his prior length of service in the U. S. Army of the duration of about four years at the Military Academy. For this reason it is alleged he was short-paid for his services rendered during the time he was a commissioned officer as aforesaid (after July 5, 1838), and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it had accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$2,200, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services rendered by a distinguished officer); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

EMILY EDWARDS.

MAY 12, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. WINN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 226.]

The Committee on War Claims, to whom was referred the bill (H. R. 4856) for the relief of Emily Edwards, submit the following report:

Your committee is of the opinion that the claim should be referred to the Court of Claims for a finding of facts under the provisions of the act of March 3, 1887, commonly known as the "Tucker act," and report herewith a resolution to that effect and recommend its passage.

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INVESTIGATION OF PINKERTON AGENCY.

MAY 12, 1892.—Ordered to be printed.

Mr. OATES, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany Mis. Doc. —.]

The House of Representatives having ordered this committee to report back the resolution proposing an investigation of the Pinkerton Detective Agency, the Committee on the Judiciary, having had the same under consideration, report therefor the following substitute and recommend its adoption:

Whereas it has been alleged that a certain organization known as the Pinkerton detectives has been employed unlawfully and to the detriment of the public by railroad corporations engaged in the transportation of the United States mails and interstate commerce: Therefore, be it

Resolved, That the Committee on the Judiciary be, and it is hereby, directed to investigate the said Pinkerton detectives, to wit: The character of their employment by corporations engaged in the transportation of interstate commerce or the United States mails, the numbers so employed, and whether such employment has provoked breaches of the peace or caused the destruction of property, and all the material facts connected with their alleged employment, and to report the same to this House by bill or otherwise at any time. And to this end, the said Committee on the Judiciary is hereby authorized and empowered to issue and cause to be served processes for the production of papers and to procure the attendance of witnesses, to administer oaths, and to employ a clerk and stenographer if necessary, and any subcommittee of said Judiciary Committee is hereby invested with like powers, for the purpose aforesaid, and may sit wherever deemed necessary, and during the sessions of the House. All of the expenses of such investigation shall be paid out of the contingent fund of the House upon proper vouchers, certified as correct by the chairman of the said committee or subcommittee, not to exceed the aggregate sum of two thousand dollars, which the Clerk of the House of Representatives is hereby directed to turn over to the chairman of such subcommittee, not exceeding one thousand dollars at a time, taking his receipt therefor, and which shall be accounted for by him to said clerk in the manner aforesaid, the same to be immediately available.

CLAIMS ARISING UNDER THE CAPTURED AND ABANDONED PROPERTY ACT.

MAY 12, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. CULBERSON, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany H. R. 455.]

The Committee on the Judiciary have considered the bill (H. R. 455) in relation to claims arising under the captured and abandoned property act and for the extension of time in which to bring suit, and recommend its passage for the following reason:

A large amount of property in the States in rebellion or insurrection was seized during the war and immediately after the cessation of hostilities, without regard to the ownership of such property, or the political status of its owners, or the possession of the property at the time of the seizure, by the military and other Federal authorities. The seizure and sale of this property were made under the acts of March 12, 1863, and July 2, 1864, known as the captured and abandoned property acts, and other measures amendatory and supplementary thereof.

The law required the property to be sold and the proceeds placed in the Treasury to the credit of the property.

The third section of the act of March 12, 1863, under which the bulk of the property was seized, provided as follows:

Any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims, and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds, after the deduction of any purchase money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof.

Under this provision of the statute many suits were instituted in the Court of Claims by persons claiming to be the owners of property seized under the acts referred to, and when the proof required by the statute was made judgment was rendered in their favor and the money paid.

Over \$30,000,000 were placed in the Treasury on account of sales of property under the act of March 12, 1863, and other kindred acts.

The amount now on hand of this fund is \$10,512,007.96.

The following statement is believed to be substantially correct and will show the whole amount of money received into the Treasury on ac-

count of captured and abandoned property and the amounts paid out from time to time:

Whole amount of abandoned and captured property sales.....	\$31, 722, 466. 20	
Cost of collecting, sale, and other expenses.....	\$6, 551, 000. 00	
Transferred to Freedman's Bureau.....	243, 000. 00	
Internal-revenue taxes and commercial intercourse fees..	1, 406, 000. 00	
Released to claimants by Secretaries Chase, Fessenden, and McCulloch.....	2, 550, 675. 24	
		10, 750, 675. 24
Balance covered into Treasury under resolution of March 30, 1872.....		20, 971, 790. 96
Paid on special acts of relief.....	\$290, 906. 32	
Paid on judgments against Treasury agents.....	64, 557. 27	
Paid on judgments under act of March 12, 1863.....	9, 833, 423. 16	
Paid by Secretary of the Treasury under act of May 18, 1872.....	195, 896. 25	
Disbursed for expenses under joint resolution of March 30, 1868.....	75, 000. 00	
		10, 459, 783. 00
Balance in Treasury.....		10, 512, 007. 96

It is understood that the application of the ruling of the Supreme Court, in an opinion delivered since this statement was made, to this fund will materially reduce the amount of this balance, but to what extent can not, with the information at hand, be stated with certainty.

The Government has had the use of this money for more than twenty years, and if it is ever to be distributed to its owners some additional legislation is required. Congress, at every session, is asked to permit individual claimants to bring suit in the Court of Claims to establish their rights in this fund. This privilege has been accorded to some and denied to others.

Further legislation is necessary in order to distribute this fund, because the limitation of two years from and after the close of the war in which claimants of this property were required to prefer their claims has long since expired, and there is now no means provided by law by which the claimants of the fund can enforce their rights.

Formerly there was much contention upon the status of this fund in the Treasury, especially that portion of it derived from the sale of property belonging to those who adhered to the rebellion. It is evident from the terms of the act of 1863 that it was not the intention of Congress that the title to the property seized under it should be divested from the loyal owners. They were allowed two years from and after the close of the war in which to prefer their claims to the property, and because no provision was made by which persons who had been disloyal could prefer their claims in the property and enforce their rights, it was contended that the seizure and sale of so much of this property as belonged to disloyal persons worked a divesture of title and absolutely transferred the proceeds to the Government. On the other hand it was contended that such seizure and sale of property of disloyal persons did not divest the title of the original owners, and that the fund derived from such sales was placed in the Treasury to be kept there to await the determination of the Government whether it should be returned to the owners of the property or not.

Your committee believe that this contention has been settled by the Supreme Court of the United States in the case of *Klein v. The United States*, reported in 13 Wallace, page 138, and the following quotations are made from the report of the case:

1. That it was not the intention of Congress, by the enactment of that statute, that the title to property seized under it should be divested from the loyal owners.

2. That the proceeds of the property should go into the Treasury without change of ownership.

3. That the same intention prevailed in regard to the property of owners who, though then hostile, might subsequently become loyal.

4. That it was for the Government itself to determine whether those proceeds should be restored to the owner or not.

5. That the President's proclamation of pardon and amnesty, with restoration of rights of property, and particularly that of July 4, 1868, *was a decision on the part of the Government which decided affirmatively the right of all the owners of such property to the proceeds thereof in the Treasury; and the restoration of the proceeds became the absolute right of the persons pardoned.*

6. And that "the Government constituted itself the trustee for those who by that act were declared entitled to the proceeds of captured and abandoned property, and for those whom it should thereafter recognize as entitled."

And in its opinion the court uses this language:

That it was not the intention of Congress that the title to these proceeds should be divested absolutely out of the original owners of the property, seems clear upon a comparison of different parts of the act.

We have already seen that those articles which became by the simple fact of capture the property of the captor, as ordnance, munitions of war, and the like, or in which third parties acquired rights which might be made absolute by decree, as ships and other vessels captured as prize, were expressly excepted from the operation of the act; and it is reasonable to infer that it was the purpose of Congress that the proceeds of the property for which the special provision of the act was made should go into the Treasury without change of ownership. Certainly such was the intention in respect to the property of loyal men. That the same intention prevailed in regard to the property of owners who, *though then hostile, might subsequently become loyal*, appears probable from the circumstances that no provision is anywhere made for confiscation of it, while there is no trace in the statute book of intention to divest ownership of private property not excepted from the effect of this act otherwise than by proceedings for confiscation.

It is thus seen that, except as to property used in actual hostilities, as mentioned in the first section of the act of March 12, 1863, no titles were divested in the insurgent States, unless in pursuance of a judgment rendered after due legal proceedings. The Government recognized to the fullest extent the humane maxims of the modern law of nations, which exempt private property of noncombatant enemies from capture as booty of war; even the law of confiscation was sparingly applied. The cases were few indeed in which the property of any not engaged in actual hostilities was subjected to seizure and sale.

We conclude, therefore, that the title to the proceeds of the property which came to the possession of the Government by capture or abandonment, with the exceptions already noticed, was in no case divested from the original owner. It was for the Government itself to determine whether these proceeds should be restored to the owner or not. *The promise of the restoration of all rights of property decided that question affirmatively as to all persons who availed themselves of the proffered pardon * * ** *The restoration of the proceeds became the absolute right of the persons pardoned, on application within two years from the close of the war. It was, in fact, promised for an equivalent. "Pardon and restoration of political rights" were "in return" for the oath and its fulfillment.*

And then the court adds this strong language:

To refuse it would be a breach of faith not less cruel and astounding than to abandon the freed people whom the Executive had promised to maintain in their freedom.

It will be observed that the court decides that the title to the proceeds of the property which came to the possession of the Government by capture or abandonment, with the exception of property used in actual hostilities, was in no case divested from the original owner.

The question therefore arises whether the Government ever determined that the proceeds of the sales of property under the captured and abandoned property acts which belonged to disloyal persons should be restored to them.

Whatever of occasion for dispute there may have been upon this question at one time there seems to be none now.

Under the act of July, 1862, known as the confiscation act, the President was authorized at any time thereafter, by proclamation, to

extend to persons who may have participated in rebellion in any State or part thereof pardon and amnesty, with such exceptions and at such time and on such conditions as he should deem expedient for the public welfare.

On the 8th day of December, 1863, the President issued his proclamation, in which he referred to the act of 1863, relating to captured and abandoned property, and offered pardon and amnesty, with restoration of all rights of property, except as to slaves and property to which third persons had acquired rights, to all persons who had participated in the rebellion who would take an oath to support the Constitution and the laws. Certain classes were excepted from the benefits of pardon and amnesty under that proclamation.

On the 29th of May, 1865, another proclamation was issued, extending pardon and amnesty, with a full restoration of all property rights, except as to slaves, etc., to all persons who had participated in the rebellion. A similar oath was required, and fourteen classes of persons were excepted from the benefits of the proclamation.

On the 7th of September, 1867, another similar proclamation of pardon and amnesty was issued, which reduced the excepted classes from fourteen to seven. Finally on the 4th day of July, 1868, a proclamation was issued by the President extending pardon and amnesty to all, with some exceptions, who had participated in the rebellion, with restoration to all rights of property except in slaves, and on the 25th of December, 1868, without exception, unconditionally, and without reservation. No oath was required.

The legal effect of the proclamations to which reference has been made was to wipe out all disability by reason of disloyalty and to present the offender before the law as a new man, as innocent as if he had never been charged with treason. These proclamations also serve to show that the President of the United States, authorized by the Constitution and by statute, determined to restore the proceeds of the sales of captured and abandoned property belonging to disloyal owners to them upon condition that they would comply with the requirements of the proclamations. Those who complied with the conditions of those proclamations were instantly rehabilitated as citizens, restored to equality before the law, and to all rights of property. In the language of the Supreme Court before quoted:

The promise of the restoration of all rights of property decided that question affirmatively as to all persons who availed themselves of the proffered pardon. * * * The restoration of the proceeds of captured and abandoned property became the absolute right of the persons pardoned, on application within two years from the close of the war.

Those who had failed to avail themselves of the proffered pardon extended by the proclamations containing conditions (if there were any such) were covered and embraced by the proclamation of July 4, 1868, which extended pardon and amnesty to all, without condition, with full restoration to property rights.

Your committee submit the following, taken from the decision of the Supreme Court in *Padelford's case*, reported in 9 Wallace:

In the case of *Garland* this court held the effect of a pardon to be such "that in the eye of the law the offender is as innocent as if he had never committed the offense;" and in the case of *Armstrong's foundry* we held that the general pardon granted to him relieved him from a penalty which he had incurred to the United States. It follows that at the time of the seizure of the petitioner's property he was purged of whatever offense against the laws of the United States he had committed by the acts mentioned in the findings and relieved from any penalty which he might have incurred. It follows, further, that if the property had been seized before the

oath was taken, the faith of the Government was pledged to its restoration upon the taking of the oath in good faith. We can not doubt that the petitioner's right to the property in question at the time of the seizure was perfect and that it remains perfect, notwithstanding the seizure.

But it has been suggested that the property was captured in fact, if not lawfully; and that, the proceeds having been paid into the Treasury of the United States, the petitioner is without remedy in the Court of Claims, unless proof is made that he gave no aid or comfort to the rebellion. The suggestion is ingenious, but we do not think it sound. The sufficient answer to it is that after the pardon no offense connected with the rebellion can be imputed to him. If, in other respects, the petitioner made the proof which, under the act, entitled him to a decree for the proceeds of his property, the law makes the proof of pardon a complete substitute for proof that he gave no aid or comfort to the rebellion. A different construction would, as it seems to us, defeat the manifest intent of the proclamation and of the act of Congress which authorized it. Under the proclamation and the act the Government is a trustee, holding the proceeds of the petitioner's property for his benefit, and having been fully reimbursed for all expenses incurred in that character, loses nothing by the judgment, which simply awards to the petitioner what is his own.

But for the bar made by the statute of limitations of two years, it seems that all persons, loyal and those who had been disloyal, might prefer their claims to this property, and upon proof of their right to the property obtain the proceeds.

Pardon and amnesty relieved claimants of captured and abandoned property from proving their adhesion to the Government of the United States during the late war.

The following is the whole of the opinion of the court in *Pargoud's* case, 13 Wallace:

We have recently decided in the case of *Armstrong* against the United States that the President's proclamation of December 25, 1868, granting pardon and amnesty unconditionally and without reservation to all who participated directly or indirectly in the late rebellion, relieves claimants of captured and abandoned property from proof of adhesion to the United States during the late civil war. It was therefore unnecessary to prove such adhesion or personal pardon for taking part in the rebellion against the United States. The judgment of the Court of Claims dismissing the petition is reversed.

It follows, from what has been said, that this fund in the Treasury does not belong to the Government, but is the property of citizens of the United States, and held in trust for them by the Government. Ought the Government longer refuse to distribute this fund among the owners of it?

Your committee believe that it is true, as alleged, that the bulk of this fund yet remaining in the Treasury belongs to persons who participated in the late rebellion, but in view of the fact that under the Constitution and the laws of the United States, as declared by the Supreme Court, the restoration of the proceeds of this property became the absolute right of the persons pardoned, the former political status of the owner can afford no just reason for withholding the money.

No laches can be imputed to this class of claimants.

The statute authorized claims to the proceeds of sales of captured and abandoned property to be preferred in the Court of Claims at any time within two years from the suppression of the rebellion. When was the rebellion suppressed? That became a question for the courts, in order to apply the statute of limitation. In December, 1869, the Supreme Court decided, in *Anderson v. United States* (9 Wallace, page 56), that the rebellion was suppressed on the 20th of August, 1866, the date of the President's proclamation declaring the final and complete suppression of the rebellion. The limitation of the right to commence suit therefore expired on the 20th day of August, 1868.

Some claimants who had participated in the rebellion filed suits in the Court of Claims before the bar of limitation was complete, but a

large majority of that class of claimants did not commence suit, because it was generally understood that, notwithstanding the proclamations of pardon and amnesty, the claimant would be required to prove his loyalty before he could have a standing in the court.

It was a matter of doubt among the members of the legal fraternity as to what effect would be given by the Supreme Court to the proclamations of pardon and amnesty. In 1869 the Supreme Court decided that the necessity of proving loyalty in order to recover the proceeds of captured and abandoned property had been removed by the proclamations of pardon and amnesty.

This decision came too late to benefit that class of claimants. The limitation had already expired and the bar was complete.

In view of the law and the facts as above stated, your committee deem it unwise for the Government, and unjust to the claimants of this fund for Congress to decline longer to make some provision by which they may establish and enforce their rights.

Your committee therefore recommend the passage of the bill.



CAPTURED AND ABANDONED PROPERTY.

MAY 13, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. EZRA B. TAYLOR, from the Committee on the Judiciary, submitted the following as the

VIEWS OF THE MINORITY:

The undersigned, differing with the majority of the committee, beg leave to state their reasons for such dissent, and as the views of the minority of the committee upon a like bill in the Fifty-first Congress were drawn by one of the undersigned and expresses our present views, we adopt that statement, to wit:

The history of Congressional legislation and judicial decision touching the subject of captured and abandoned property is correctly given by the majority in their report; still it does not follow that the bill should pass.

By statute of March 3, 1863, any person claiming to have been the owner of any such abandoned and captured property might, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims, and on proof of his ownership of said property, of his right to the proceeds thereof, and that he has never given aid or comfort to the rebellion, receive the residue of said proceeds, after the deduction of any purchase money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof.

Under the provisions of that statute many suits were successfully prosecuted, and said claims were paid; but the two years within which claims were to be preferred expired, leaving a large number of claims outstanding. This bill is to give further time for preferring such claims. The fact is, that the outstanding claims were and are held almost exclusively by men who could not prove that they had "never given aid or comfort to the rebellion." The subsequent decision of the Supreme Court, however, construed the President's proclamation of pardon and amnesty, of July 4, 1868, as restoring such men to loyalty and to all the rights which loyal citizens were entitled to under the act of March 12, 1863. That is, they, thinking themselves to have been disloyal in rebellion, and as having given aid and comfort to the rebellion, preferred no claim until too late; but finding, after the expiration of two years after the suppression of the rebellion, that they were technically loyal, now ask Congress to remove the legal bar to their claims.

They had their day in court, but did not avail themselves of it by reason of their ignorance of law, which excuses no one, and by reason of their knowledge of their disloyalty. The limitation of actions is a necessary and wholesome provision of law, not necessarily inequitable or obnoxious to the sense of common justice. It may, however, be removed or extended in proper cases. The only question to be considered in regard to this bill is whether it presents a proper and equitable case for the removal of the limitation, which took effect nearly twenty years ago.

Legally the parties in interest in this bill have no standing in court. Ought they to be given such standing?

Their property was taken by the United States and sold, and the proceeds thereof are in the Treasury.

They were in fact in arms against the Government from which they now demand "justice." Considering their numbers and influence it will not be denied that they did great injury to that Government, its property, and citizens. They caused it more expense and loss, doubtless, than the amount of the property covered by this bill. Their offense was serious and the wrong done the Government by them great. They have been dealt generously with by the United States Government, but the undersigned are unable to appreciate their claims for further consideration as presented by this bill.

Again, the lapse of time since the transactions to be investigated by the Court of Claims under this bill, and the nature of the transactions and the circumstances surrounding them, will inevitably, as we think, result in findings of the court largely in excess of the amount in the Treasury arising from the sale of abandoned and captured property, and will call for unlimited subsequent appropriations by Congress.

E. B. TAYLOR.



ADDITIONAL COMPENSATION TO ASSISTANT COMMISSIONERS, MELBOURNE INDUSTRIAL EXHIBITION.

MAY 12, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CABLE, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany H. R. 1891.]

The Committee on Foreign Affairs, to whom was referred House bill 1891, having had the same under consideration, submit the following report:

By joint resolution of Congress approved February 1, 1888, the sum of \$50,000, or so much thereof as might prove necessary, was appropriated to pay such expenses as might be incurred by the Government of the United States in accepting the invitation of the British Government to participate in the international exhibition to be held in Melbourne August 1, 1888.

The sum thus appropriated, it was further directed, was to be expended in the discretion of the Secretary of State.

Under the authority of this act the Secretary of State appointed one commissioner and four assistant commissioners to have general charge and supervision of American exhibits and to properly represent the interests of the American people at the said exposition, fixing their salaries at the rate of \$5,000 and expenses for the commissioner and \$2,500 for each of the assistant commissioners, the latter amount being for both salary and expenses.

The commissioner so appointed was Frank McCappin, of California; and the assistant commissioners, F. B. Wheeler, of New York; R. L. Miller, of Virginia; Thomas B. Merry, of Oregon; and Alex. Campbell, of Louisiana.

Prior to these appointments, however, the press throughout the country, in writing of the approaching exposition, had announced that the compensation of the assistant commissioners would be \$5,000 and expenses.

To ascertain the truth of these statements inquiries were made at the State Department on the request of the gentlemen subsequently appointed, and these were met by the assurance that it was the purpose of the Department to allow each of the assistant commissioners a salary of \$2,500 together with \$2,500 each for the expenses of the trip and of the sojourn in Australia.

Thereupon Messrs. Wheeler, Miller, Merry, and Campbell, who had been already selected as assistant commissioners, though not yet publicly appointed, signified their willingness to serve and commenced at once their preparations for the journey to Australia.

2 ASSISTANT COMMISSIONERS, MELBOURNE INDUSTRIAL EXHIBITION.

It was not until they had made all necessary arrangements for a prolonged absence from the country, after they had engaged passage on the steamer sailing to Melbourne, that the State Department publicly announced the appointments, together with the unexpected reduction in compensation to \$2,500 to cover both expenses and salary.

Acting under the belief that this sum might prove sufficient for their expenses of travel and living during their nine months' absence in Australia, the assistant commissioners decided not to draw back, but to continue to Melbourne and render there the service the Government required of them.

It was made to appear, however, to the subcommittee before whom one of the assistant commissioners, Mr. Alex. Campbell, appeared that the expenses were far in excess of what had been anticipated; that the commissioners were subjected to large and unexpected expenses in the discharge of their duties and that the amount asked in this bill would not repay them for the actual and necessary outlays made in properly discharging the duties of their position as commissioners.

Inasmuch as the labors of these assistant commissioners were not only arduous, but of great value to the country as well; that their acceptance of the office was due to a misunderstanding or to misinformation for which they were in nowise responsible; that their actual expenses in the prosecution of this work for the Government were greater than what has been already allowed and what they now ask, and that there yet remains an unexpended balance of \$10,770.27 from the appropriation of February 1, 1888, the committee recommends the passage of this bill, wherein an additional compensation of \$1,500 is asked for each of these four assistant commissioners.



AMENDING CHAPTER 559, STATUTES AT LARGE.

MAY 12, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. SMITH, of Arizona, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany H. R. 8268.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 8268) amending chapter 559, page 1093, volume 26, United States Statutes at Large, beg leave to report that the committee has given careful consideration to said bill and recommend its passage.

The statute sought to be amended by the bill deals with certain defenses against the charge of cutting timber on the public lands, and gives certain rights to citizens in the States and Territories mentioned in said statute, and inadvertently, as your committee thinks, omits the Territories of Arizona and New Mexico.

There is no reason why said act should not apply to said Territories, and your committee recommend that said Territories be included in said statute.

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MIAMI INDIANS.

MAY 12, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LYNCH, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 111.]

The Committee on Indian Affairs, to which was referred the bill (H. R. 111) to reimburse the Miami Indians of Indiana for moneys improperly withheld from them, submit the following report:

A bill similar to the one under consideration and identical in purpose was favorably reported to the House by this committee, with amendments, in both the Forty-ninth and Fiftieth Congresses, but was not reached for consideration. A bill identical with this bill was introduced in the House of the Fifty-first Congress by the Hon. A. N. Martin, who then, as now, represented in Congress the district in which the beneficiaries reside, and that bill was, by the unanimous voice of this committee in the Fifty-first Congress, reported favorably to the House, with amendments, but it was not reached for consideration.

In the Senate of the Fifty-first Congress a bill almost identical with the first and third sections of the present bill was introduced by the Hon. D. W. Voorhees, which was favorably reported, without amendment, to that body by its Committee on Indian Affairs, and was passed unanimously on December 2, 1890, and on being sent to the House was again favorably reported, with amendments, by this committee and placed upon the calendar, but never reached.

The facts out of which this bill grew, and upon which this and the previous reports above referred to were based, are as follows, to wit:

In 1854 the United States made a treaty with certain Indians known as the Miamis of Indiana, whereby it was agreed that certain persons belonging to said tribe, then residing in Indiana, should receive certain annuities and lands.

It was further expressly agreed that the number of persons thus residing was 302, and their names were at the time, by the United States officials, enrolled, in accordance with the terms of the treaty, in a list known as the "corrected list," made in the presence of and approved by the Commissioner of Indian Affairs then in office.

It was further expressly agreed that no persons other than these 302, together with the increase of their families and such other persons as should be received into tribal relation with them "by the consent of the said Miami Indians of Indiana, obtained in council according to the custom of the Miami tribe of Indiana" (see book of Indian Treaties, p. 516), should be entitled to any portion of said annuities and lands.

It is admitted by the Attorney-General of the United States, in an official communication to Congress in 1867, as well as in the debates then had in Congress, that "the tribe in council never did, according to their custom, consent to the addition of those names or to their being paid," referring to the names of 73 persons other than the original 302 and the increase of their families, which were placed on the said "corrected list" by the Secretary of the Interior under the act of Congress of June 12, 1858, passed some four years after the treaty was made. (Congressional Globe, second session Thirty-ninth Congress, pp. 1648, 1649.)

Under this act of 1858 the Secretary of the Interior, in October, 1858, placed on said "corrected list" 68 names of persons not received into the tribe, and 5 additional names in November, 1862; so that at that time 73 in all had been added who were not listed when the treaty was made, who had not been received into the tribe by the action of its council, and who were not of the increase of the families of the original 302 listed persons. To these 73, who, with the increase of their families, in 1867 amounted to 119 persons, there was paid a ratable proportion of twelve annual payments of the annuities of the said original 302 Miami Indians, to wit, of the payments for the years 1854-'55 to 1866-'67, inclusive.

The only authority claimed by the United States officials for making these payments, which clearly, not to say ruthlessly, violated the treaty of 1854, was this act of Congress passed in 1858, an act passed without consultation with the 302 listed Indians, and it is admitted upon all hands without their consent, express or implied.

It is worthy of note, also, that this act of 1858 was a provision inserted as a Senate amendment in the supplemental Indian appropriation bill of that year. The following is the discussion in the Senate upon which the action was had:

MR. SEBASTIAN. I offer another amendment as an additional section:

"SEC. 7. *And be it further enacted*, That the Secretary of the Interior be, and he hereby is, authorized and directed to pay to such persons of Miami blood as have heretofore been excluded from the annuities of the tribe, since the removal of the Miamis in 1846, and since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded; and he is also authorized and directed to enroll such persons upon the pay list of said tribe, and cause their annuities to be paid to them in future: *Provided*, That the foregoing payments shall be in full of all claims for annuities arising out of previous treaties. And said Secretary is also authorized and directed to cause to be located for such persons each 200 acres of land, out of the tract of 70,000 acres reserved by the second article of the treaty of June 5, 1854, with the Miamis, to be held by such persons by the same tenure as the locations of individuals are held which have been made under the third article of said treaty."

Continuing Mr. Sebastian says:

There is no appropriation from the Treasury in this amendment; it is a mere inter-tribal regulation between the Miamis, of Indiana, and a few families who have been improperly deprived of their annuities. It is to authorize the Secretary of the Interior to arrange and adjust the proportion of annuities among them; annuities already due by treaty.

MR. HUNTER. Is this on the recommendation of the Department?

MR. SEBASTIAN. The information is official and comes from the Department. They entertain no doubt as to the improper exclusion of the families mentioned in the amendment, but they do not recommend it. They thought it a matter properly referable to Congress, and the Committee on Indian Affairs report this as proper legislation by Congress.

MR. FITCH. It is all right.

MR. HUNTER. Does it commit us to make any appropriation—to take from one tribe to give to another?

MR. FITCH. They are all the same tribe

Mr. SEBASTIAN. This simply extends the pay-roll of the Indiana Miamis so as to include a few families who have heretofore been improperly excluded.

The amendment was agreed to.

The foregoing is the whole of the discussion in the Senate when the act of 1858 was passed. (Congressional Globe, first session, Thirty-fifth Congress, p. 2822.)

Whether or not the act violated the terms of the treaty of 1854 was not discussed. That it violated this treaty by taking away from the original 302 listed Indians, and the increase of their families, over one-fourth of their lands and annuities, without their consent, without their knowledge, and in direct violation of their solemnly guaranteed treaty rights, was not even remotely hinted at in this slight and brief discussion.

No evidence whatever of any "improper exclusion" of the added Indians was placed before the Senate at that or any other time.

When the amendment came back to the House for concurrence, the debate upon it was, and the facts adduced were, still more meager, if possible, than when the measure was before the Senate.

There the House, on motion of Mr. J. Glancy Jones, on June 10, 1858, went into Committee of the Whole House on the state of the Union to consider the Senate amendments to the supplemental Indian appropriation bill. (Congressional Globe, first session, Thirty-fifth Congress, p. 2910.)

The amendment (being act of 1858 under consideration) being in order, the consideration it received was as follows:

Mr. J. GLANCY JONES. Upon examination of the matter it was ascertained that some of the Miami Indians were omitted from the list. The amendment provides that they shall be reckoned in. It brings in a few Indians who were unjustly left out. The Committee on Ways and Means recommend a concurrence.

The amendment was concurred in.

This was all the information given to the House. (Congressional Globe, first session Thirty-fifth Congress, pp. 2912, 2913.) Thus did Congress, in violation of the treaty of 1854 and of the rights of the persons to whom the treaty guaranteed them, almost without consideration, and certainly without adequate proof, parcel out the moneys and lands of the 302 to those who, by that treaty, had no possible right to any portion of either land or moneys.

This was all done on the assumption that these 73 added persons had been "improperly excluded" by the treaty of 1854. But if this was so, why were not the 302 given an opportunity to defend against the charge? Surely the truth would have lost nothing by such an investigation. But the charge was not true. At the time of the repeal of this act of 1858, viz, in February, 1867, it was clearly shown that the 73 were not entitled to be listed with the 302 for two reasons: First, they were not of full Miami blood; second, their right to annuities and lands rested with the remainder of the tribe, which had chosen to emigrate west of the Mississippi under treaty stipulations with the United States, made in 1846 and 1854; and it was unjust, as well as violative of the treaty of 1854, to list them with the 302; and after a very full discussion Congress repealed the law of 1858 on these grounds. (Congressional Globe, second session Thirty-ninth Congress, pp. 1647, 1650.)

It is also worthy of notice that this repeal was had upon the motion of the Senate, where the mistaken action of 1858 first originated and came in by way of an amendment to the Indian appropriation bill of 1867, first proposed in the Senate (Congressional Record, second session Thirty-ninth Congress, pp. 1646, 1647); and the discussion in the

Senate as to the propriety of the repeal was clear and full, and conclusively shows that the act of 1858 was a clear and palpable violation of the treaty of 1854, and upon the repeal of the law the 73 persons, together with the increase of their families, were dropped from the list and have been paid nothing since 1867.

But this action of Congress was only a partial reparation for the wrong committed by the act of 1858. It only stopped further wrongful payment. It did not make restitution of the lands and moneys wrongfully diverted. It is too late now to correct the wrong as to the lands so taken, for the rights of innocent purchasers have intervened and render that impracticable. But it is not too late to restore the moneys which have never been refunded.

During most of the years from 1858 to 1867 the 302 strenuously objected to the payments of which they now complain. A bill (H. R. 2099, first session, Fiftieth Congress) was introduced into the House by the member then representing the district in which these Indians reside, and upon his inquiry of the Commissioner of Indian Affairs on this point, while the bill was being considered in committee, he received the following reply and document, viz:

To the honorable the Senate and

House of Representatives of the United States in Congress assembled:

The undersigned, your petitioners, would to your most honorable body most respectfully represent that they are Miami Indians, residing in the State of Indiana, and that they and their families and the persons whom they represent are the individuals referred to as the Miami Indians in the Senate amendment to the fourth article of the treaty of the 5th of June, 1854, between the United States and the Miami Indians, and whose names are embraced in the corrected list referred to in said treaty amendment; and your petitioners respectfully call your attention to that provision which stipulates that no person other than those embraced in the corrected list agreed upon by the Miamis of Indiana, in the presence of the Commissioner of Indian Affairs, in June, 1854, comprising 302 names as Miami Indians of Indiana, and the increase of the families embraced in said corrected list, shall be recipients of the payments, annuities, commutations, moneys, and interests hereby stipulated to be paid to the Miamis of Indiana, unless other persons shall be added to said list by the consent of said Miami Indians of Indiana, obtained in council, according to the custom of the Miami Indians of Indiana.

Your petitioners further show that the Secretary of the Interior, in pursuance of the third section of an act of Congress approved June 12, 1858, entitled "An act making supplementary appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1859," has caused to be added to said list the names of some 60 persons, as we are informed; that the same have been added without our consent and against our wishes, and have been paid out of our moneys; that we conceive that if the section of the act referred to was intended to refer to the Miamis of Indiana, as it is construed by the Commissioner of Indian Affairs, it is in direct violation of said treaty.

Your petitioners, therefore, humbly pray that said third section of the act referred to, or so much thereof as violates their rights and appropriates their money for the benefit of persons whom they do not recognize, may be repealed, and that the moneys heretofore diverted to that purpose may be refunded. And in duty bound your petitioners would ever pray, etc.

Done in council on the 1st day of February, 1859, at the house of Gabriel Godfrey, on the Mississinewa River, Miami County, Ind.

(Signed with an x mark): John B. Bronellitt or Te-quah-yah, Peter Bondie or Waw-pow-pe-ta, Me-shing-o-me-sha, Pim-y-tine-aw, Kil-oc-com-ach, La-maw-wah, Shaw-aw-pe-ne-maw, Waw-caw-co-now, Po-con-ge-ah, Len-e-pe-shew-saw, Waw-pe-man-gnaw, Po-can-ge-ah, Ah-toh-a-toh, Pe-me-to-sin-wah, Ke-oh-cat-wah, She-pen-do-ciah, Ke-oh-cat-wah, Pa-len-swah, My-ac-gne-ah, Gabriel Godfrey, We-shing Goodbo, So-mile-le-jes-ion, Sho-quang-oh, William Godfrey, Tow-wah-quah-iey.

No written protest was filed by Miami Indians at each payment against allowing Indians placed on roll in 1858 to participate in annuities. Several of the agents making payments, however, report that these Indians were objected to.

J. D. C. ATKINS,
Commissioner.

It may be claimed that these Indians occupied the relation of wards to the United States Government, and therefore Congress had the right to pass the act of 1858, notwithstanding it violated the treaty of 1854. As a matter of mere force Congress could so act, but certainly not as a matter of conscience and right. Your committee know of no principle of guardianship which protects the guardian in appropriating the property of one ward to the use of another ward. Besides these Indians are now and for many years have been resident citizens and voters in the State of Indiana, and were such when the act of 1858 was passed.

As to the amount that should be refunded, your committee fix it at the sum of \$48,072.69; this being the amount as computed by the Interior Department in its communication to a former Representative in this House under date of February 14, 1887, as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, February 14, 1887.

SIR: In compliance with your verbal request, I submit the following statement in reference to certain Miami Indians of your State who were, under act of June 12, 1858 (U. S. Stat. 11, p. 332), enrolled with the 302 persons named in the Senate amendment to the treaty of 1854 (U. S. Stats. 10, p. 1099):

After the removal of the larger portion of the Miami Indians of Indiana to their new homes in the West in 1854, a number belonging to the tribe and who remained in Indiana, including the names of those who had been objected to by the delegations of the tribes from the Indian country and from Indiana who appeared before the Commissioner of Indian Affairs during the summer of 1854, and just before the conclusion of the treaty of that year, as not being of Miami blood, and that they were not considered by them to belong to their tribe, and who were consequently omitted from the list agreed upon at the making of the treaty and left unprovided for, called the attention of the Government to their case and insisted upon being restored to their tribal rights. Their claim was laid before Congress in May, 1858, with a full report in reference to the descent of each claimant, showing that they had all proved themselves to be of part Miami blood and recommending the legislation necessary for their relief. The result was the act of June 12 of that year, above referred to, section 3 of which reads:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to pay to such persons of Miami blood as have heretofore been excluded from the annuities of the tribe since the removal of the Miamis in 1846 and since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded; and he is also authorized and directed to enroll such persons upon the pay list of said tribe and cause their annuities to be paid to them in future, provided that the foregoing payments shall be in full of all claims for annuities arising out of previous treaties. And the Secretary is also authorized and directed to cause to be located for such persons each 200 acres of land out of the tract of 70,000 acres reserved by the second article of the treaty of June 5, 1854, with the Miamis, to be held by such persons by the same tenure as the locations of individuals are held which have been made under the third article of said treaty."

By virtue of this act 68 persons who were proved to be part Miami blood were added to the list of Miamis and became recipients of the annuities and lands from which they had been excluded since the removal of the tribe in 1846 and since the treaty of 1854, and in the winter of 1862, after a careful investigation into the claims of 3 grandchildren and 2 great-grandchildren of John Baptiste La Bresche, the Secretary decided that they also were of Miami blood and entitled to the benefit of the act of 1858; and by his direction they were enrolled with their tribe and all arrears paid to them, thus making altogether an addition of 73 persons to those named in the list agreed upon at the treaty of 1854.

These 73 and their descendants continued to draw a share of the annuities payable to the Miamis of Indiana up to and including the year 1867, or, in all, thirteen annual payments, when by act of March 2, 1867 (14 Stats., p. 492), making appropriations for the current and contingent expenses of the Indian Department for the fiscal year ending June 30, 1868, there is appropriated to the Miamis of Indiana for

interest on \$221,257.86, as provided for in the treaty of 1854, \$11,062.89, and section 5 of same act is as follows:

"That the sum hereinbefore appropriated to the Miamis of Indiana, or which shall hereafter be appropriated to them, shall only be paid to such persons as may be, upon the opinion of the Attorney-General, legally entitled to the same under the provisions of the treaty with said Indians of June 5, 1854, and Senate amendments thereto, regardless of any subsequent legislation."

Accordingly the question was submitted to the Attorney-General, who, after reviewing the treaties and legislative acts under which the Miami Indians became entitled to their annuities, states as follows:

"The appropriation of \$11,062.89 to the Miamis of Indiana by act of March 2, 1867, is directed to be paid only to such persons as may be legally entitled to the same under the treaty of 1854 and Senate amendments thereto, without reference to subsequent legislation. From the foregoing there does not seem to be any room for doubt as to who these persons are. In the body of the treaty they are referred to under the general description of Miami Indians of the State of Indiana and Miamis of Indiana; but these must be understood as comprehending only such Indians as are more particularly designated in the amendment, who may be classified and described as follows:

"(1) Persons embraced in the *corrected list* agreed upon by the Miamis of Indiana in the presence of the Commissioner of Indian Affairs in June, 1854, comprising 302 names.

"(2) The increase of the families of persons included in said list.

"(3) Persons who shall be added to said list by the consent of the said Miamis of Indiana, obtained in council according to the custom of the Miami tribe. In my opinion the persons here indicated, and no others, are legally entitled to the above-mentioned appropriation, under the said treaty and amendment, without reference to subsequent legislation."

In view of this opinion a special agent, M. W. Wines, of Fort Wayne, Ind., was instructed to prepare a new roll which should contain the names of all Indiana Miamis then living whose names appeared on the roll of 1854 and the names of the descendants of all who appeared there and who were then alive, and no other.

Accordingly Agent Wines submitted a roll, which, after being duly examined in this office and found correct in all important particulars, was returned to him approved, and he was directed to, and did, pay to the persons named thereon all of the \$11,062.89 above referred to.

With this roll Agent Wines also submitted a roll containing the names of 119 persons who, under the decision of the Attorney-General, were excluded as not entitled to a share in this money, which was also approved, and there is no record in this office that any of these 119 ever obtained the requisite consent of the Miamis of Indiana, in council, according to the custom of the tribe, to have their names added to the list agreed upon in June, 1854; and since the above payment was made by Agent Wines for the fiscal year ending June, 1868, and at each subsequent payment of annuity money since that year up to and including the final payment of the principal sum of \$221,257.86 by Hon. Calvin Cowgill in 1882, these 119 persons and their descendants have been excluded.

Repeated efforts have been made in this office to trace the original 73 persons who were added to the Miami rolls of 1854-'55 through the rolls for the subsequent twelve payments, but owing to the brief manner of enrolling Indians for payment followed some years back, and the frequent changes in the family relations and manner of spelling Indian names, this was found to be impracticable. Neither can the 119 persons finally excluded under the opinion of the Attorney-General be traced back for the same reasons, but it is believed that the total amount paid to these 73 or 119 persons named can be arrived at sufficiently close to satisfy all parties by the following method, viz: To find the number who drew a share of this money each year from 1854 to 1867, inclusive, we must first take from the 119 excluded 11 who were born subsequent to the payment of 1867, as appears by the records in this office, which leaves but 108 who actually shared in the payment of 1867, or could have shared in the other payments. To this 108 we add the original 73, making 181, which, divided by 2, gives an average enrollment for the thirteen years of 90½. In the same way we take the amount of one per capita share as the same appears on the rolls for each of the thirteen years in question, viz:

Fiscal year.	Amount.	Fiscal year.	Amount.	Fiscal year.	Amount.
1854-'55	\$41.49	1859-'60	\$48.71	1864-'65	\$25.00
1855-'56	55.50	1860-'61	28.51	1865-'66	51.05
1856-'57	64.46	1861-'62	28.51	1866-'67 .....	.....
1857-'58	52.11	1862-'63	67.00		
1858-'59	43.85	1863-'64	25.00	Total	531.19

Which, multiplied by 90 $\frac{1}{2}$, the average number of the 73 or 108, who shared in these payments, gives \$48,072.69 as the total amount so paid, or, say, in round numbers, \$48,000, which is no doubt very nearly correct. I should think sufficiently so for Congress to act upon in case it is proposed to pay it or any part of it to the original 302 persons on the corrected list of 1854 and to their descendants.

In explanation you are informed that the payment for the fiscal year 1856 of a per capita of \$55.50 was not regular current interest, but back unpaid annuities, and that the payment for the fiscal year 1856 was made at the same time that the payment for 1865-'66 was made, the funds appropriated for the year 1866-'67 being used for that purpose, and the payment for the last-named year was subsequently provided for and paid, but no part of it was afterwards paid to the 73 or 108 persons dropped.

As these payments were recommended by a previous head of this Department, and made under Congressional authority, I do not feel warranted in making any suggestion or recommendation in the premises.

In reply to your verbal request for a statement of fees paid attorneys for Miami Indians, and explanation of the nature of the duties they performed, and an opinion as to whether they should have been paid by the Government or by the Indians, I inclose herewith a copy of a report by this office to the honorable Secretary of the Interior of January 2, 1886, which contains the names of the attorneys employed, refers to the nature of the duties they performed, and states the amounts paid to them.

As these attorneys were employed under a previous administration of the affairs of this Department, and as I have no reason to suppose that their contracts with the Indians were not closely scrutinized and the fees paid believed to be a reasonable and proper charge against said Indians before being approved, I must respectfully decline to give an opinion in the matter.

Respectfully,

J. D. C. ATKINS,
Commissioner.

Hon. GEO. W. STEELE,
House of Representatives.

Since this bill (H. R. 111) was referred to this committee, it was referred to the Hon. John W. Noble, Secretary of the Interior, for the opinion of that Department on the merits of the bill, and by him it was referred to the honorable Commissioner of Indian Affairs. This latter officer gave full consideration to the bill and approved the first section thereof in the following communication by him addressed to the Secretary of the Interior, and by the latter referred to this committee in the following words, to wit:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, April 21, 1892.

SIR: I have the honor respectfully to return herewith H. R. 111, being a bill to reimburse the Miami Indians of Indiana for money which they claim was improperly withheld from them by the United States, received by Department reference of 13th inst., and in compliance with your instructions to report thereon, I inclose a copy of a communication addressed to Hon. Geo. W. Steele by Commissioner of Indian Affairs, J. D. C. Atkins, under date of February 14, 1887, which contains a full statement of this matter, and which is to the effect that, under the provisions of a treaty with the Miamis in the year 1854 (10 Stats., p. 1099), a certain sum of money was set aside for 302 Miamis in Indiana, who were named in a list filed in this office, the interest to be paid to them annually, and all other Miamis were specifically excluded by the terms of the treaty from sharing in this money, unless permitted to do so by said Miamis of Indiana, by act of their council.

During the year 1858, however, 68 persons who had some Miami blood petitioned Congress to be added to this approved roll of 302 persons and allowed to share in the interest named, and under date of June 12, 1858 (11 Stats., 332), an act was approved authorizing their enrollment, and said 68 (afterwards increased to 108) were allowed to share with the Indiana Miamis for thirteen years, or up to and including 1867, when, owing to the original 302 persons objecting, Congress by act of March 2, 1867 (14 Stats., 492), directed that the Attorney-General decide the question, which decision was to the effect that no one who was not included in the list of 302 persons, and the increase of the families of such, were entitled to share in said interest, unless others were added by consent of the Indiana Miami council. Consequently, the names added, as above explained, were stricken from the roll, and the whole of the interest was paid to the 302 and their descendants, beginning with that for the year 1868, up to and including the year 1882, when the principal was paid to them.

Commissioner Atkins adds: "As these payments (those to the 108 whose names were added) were recommended by a previous head of this Department, and made under Congressional authority, I do not feel warranted in making any suggestion or recommendation in the premises."

After carefully considering all the circumstances, I do not agree with Mr. Atkins in the conclusion he reached, but think that inasmuch as the money paid to the added persons was taken from that belonging to the 302 under specific treaty provisions, and was paid to others who were not added to the roll by consent of the 302, and as Congress by its subsequent action, above referred to, recognized the fact that the justice of such payment was questionable, and that the money may have been improperly diverted, and further, as the Attorney-General decided that the added parties receiving the money were not entitled to it under the treaty, I am of the opinion that the claim of the Miami Indians of Indiana, referred to in the first section of the bill, is just and that the necessary funds should be appropriated to pay it.

In reference to section 2 of the bill, which is to reimburse the Miami Indians for certain fees, amounting with interest to \$5,714, which it is claimed were wrongfully withheld from said Indians and paid to attorneys for personal services rendered, I must agree with Commissioner Atkins's statement in the final paragraph of his letter above noted, that as these charges were no doubt closely scrutinized by the Department and believed to be reasonable and proper charges against the Indians before being approved or paid I must also decline to recommend that the Indians be reimbursed therefor, in which opinion I am sustained by a report in regard to the matter by Mr. Boothman, of the Committee on Indians Affairs, Report No. 22, House of Representatives, Fifty-first Congress, first session, page 5, who says:

"Regarding the claim set out in the bill under consideration for attorney fees, claimed to have been paid, your committee are of opinion it should not be refunded. We place this opinion on the ground that in this matter these Indians upon the one hand and the United States on the other are by this bill placed in the attitude of litigants before a court of equity. That the act of 1858, under which the payments complained of were made, was regularly, though as we believe mistakenly, passed; yet we are bound to presume it was an honest mistake; and as the fees were incurred principally in securing the legislation by which the 73 persons and the increase of their families were excluded from the roll, we think it should not in equity give the prevailing party the right to recover attorney fees."

The communication of Hon. Thomas Lynch, covering the bill referred to, is herewith respectfully returned.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

It is thus plainly seen that the Interior Department, through the proper bureau, pointedly recommends the appropriation of the said sum of \$48,072.69 to pay the persons entitled thereto, and in this the present Committee on Indian Affairs concur and recommend the passage of the bill so amended as to cover only that sum and no more.

Regarding the claim set out in the bill under consideration for attorney fees claimed to have been paid, your committee are of opinion it should not be refunded. We place this opinion on the ground that in this matter these Indians upon the one hand and the United States on the other are by this bill placed in the attitude of litigants before a court of equity. Though the act of 1858, under which the payments complained of were made, was regularly, though as we believe mistakenly, passed, yet we are bound to presume it was an honest mistake; and as the fees were incurred principally in securing the legislation by which the 73 persons and the increase of their families were excluded from the roll, we think it should not in equity give the prevailing party the right to recover attorney fees.

Upon the question of interest on the sum herein recommended to be paid, your committee think the case one in which interest should not be allowed. From 1867 to the year 1887 it seems that no action was taken by these Indians which invoked the action of Congress upon this particular claim to have these moneys refunded, except their protest

and petition above set out. We think Congress would have refunded the sum due long since if a proper attempt had been made to invoke its aid; but that not having been done, we apply a principle analogous to the statute of limitations as to the interest and refuse to pay it.

Your committee also think that the bill should be further amended by providing that the acceptance of the sum herein recommended to be paid shall be considered a release of all further claim of any and every kind arising out of this matter. We therefore recommend that the bill be amended as follows:

Immediately after the word "Indiana," in line 5 of section 1, insert the words, "being three hundred and two persons listed on the corrected list under the treaty of June fifth, eighteen hundred and fifty-four, and the increase of their families."

Also, in line 5 of said section 1, strike out the words "ninety-four thousand," and in their stead insert the words "forty-eight thousand seventy-two and sixty-nine one-hundredths."

Also, in line 8, change the word "treaties" to "treaty."

Also, in line 10 of said section 1, strike out the words "or eighteen hundred and fifty-eight, or so much of said sum as may in equity be found to be due to said Miami Indians of said State."

Also, add the following proviso to the end of said section 1 as above recommended to be amended, viz:

Provided, That the sum hereby appropriated shall be in full settlement of any and all claims in favor of said Miami Indians, or any of them, arising out of any and all alleged violations of the terms of said treaty of June 5, 1854, on the part of the United States Government.

Also, strike out the whole of section 2 of said bill, and in line 1 of section 3 of said bill strike out the figure "3" and insert the figure "2."

And as thus amended we recommend the passage of the bill.



CERTAIN VOLUNTEER AND REGULAR SOLDIERS.

MAY 12, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. ELLIS, from the Committee on the Revision of the Laws, submitted
the following

REPORT:

[To accompany H. R. 7763.]

The Committee on the Revision of the Laws, to whom was referred the bill (H. R. 7763) to repeal section 9 of the act for the relief of certain volunteer and regular soldiers of the late war and the war with Mexico, passed March 2, 1889, have had the same under consideration, and make the following report:

The act of March 2, 1889, authorizes the Secretary of War to remove the charge of desertion in certain cases from the record of any regular or volunteer soldier of the late war upon proper application and satisfactory proof. Section 9 of the act above referred to provides that all applications for relief under the said act shall be made and filed with the Secretary of War within three years from and after the 1st day of July, 1889, and that applications not made and filed within the said term of three years shall be barred and receive no consideration. The scope of the present bill is to amend section 9 so as to extend the time for the limitation of the operation of said section for the period of three years from the 1st of July, 1892.

The committee recommend that the bill do pass.

LEAVE OF ABSENCE FOR MEMBERS OF THE GRAND ARMY
OF THE REPUBLIC DURING THE ENCAMPMENT.

MAY 12, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. ELLIS, from the Committee on the Revision of the Laws, submitted
the following

REPORT:

[To accompany H. R. 8531.]

The Committee on the Revision of the Laws, to whom was referred the bill (H. R. 8531) providing for leave of absence for members of the Grand Army of the Republic in Government employ in the District of Columbia, during the encampment of the Grand Army of the Republic, in Washington, in September, 1892, have had the same under consideration and recommend that the said bill do pass with the following amendment:

In line 6 strike out the words "members of the said organization" and insert in lieu thereof "ex-Federal soldiers."



CHARLES HARKINS.

MAY 12, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 6971.]

The Committee on War Claims, to whom was referred the bill (H. R. 6971) entitled "A bill for the relief of Charles Harkins," report:

Charles Harkins served as an enlisted man in the U. S. Army from December 3, 1853, to December 3, 1858; and as an enlisted man from March 26, 1863, to January 10, 1865; next as a commissioned officer, U. S. Army, as first lieutenant One hundred and twenty-fourth United States Colored Troops from January 10, 1865, to October 24, 1865; next as a commissioned officer in said Army from February 23, 1866, to June 18, 1878. During all the time he served as such commissioned officer the following provisions of law, respectively, were in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258; act of July 5 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services while he thus served as a commissioned officer in the U. S. Army merely what other officers of his grade were generally paid, and he was paid or allowed no increase of compensation whatever for his services as a commissioned officer in the U. S. Army prior to June 18, 1878, on account of his said prior length of service as an enlisted man. For this reason it is alleged he was short-paid for his services as a commissioned officer prior to June 18, 1878, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists, or may exist, to prevent the Court of Claims from hearing and determining his demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$2,400; and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim; it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is "that the claimant may go before a competent tribunal and prove the justness of his claim if he can."

The committee recommend that the bill do pass.

GEORGE W. BARNES.

MAY 12, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CABLE, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany H. R. 2852.]

The Committee on Foreign Affairs, to whom was referred House bill 2852, after duly considering the same, submit the following report:

This bill authorizes and directs the Secretary of State to withdraw from the files of the State Department and to deliver to the heirs or legal representatives of the late George W. Barnes, certain papers filed there during the sitting and for the consideration of the late American and Mexican Claims Commission, to establish the justice of a claim made by the late George W. Barnes, as assignee, against the Mexican Government.

The said claim, after an examination by the Commissioners, was not allowed.

It is the belief of the heirs of the late George W. Barnes that the justice of this claim may be established in the Mexican courts and allowance made by them, although refused in the international court representing both countries.

To accomplish this end it will be necessary for them to lay the original documents before these courts, and they therefore pray that the Congress of the United States may direct all of these papers to be restored to their possession.

Inasmuch as such authority has been granted from time to time in the past (in one instance the papers in a claim rejected by the same American-Mexican Claims Commission having been restored), and inasmuch as there is no apparent reason why this petition should be refused, while it might result in hardship and injustice if denied, the committee therefore recommend the passage of this bill.

ALBERT J. PRATT.

MAY 12, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 7138.]

The Committee on War Claims, to whom was referred the bill (H. R. 7138) entitled "A bill for the relief of Albert J. Pratt, administrator of Thomas W. Sherman," report:

Thomas W. Sherman served in the U. S. Army as a cadet at the West Point Military Academy for about four years prior to July 1, 1836, when he was commissioned second lieutenant, Third Artillery, in the U. S. Army, and served therein continuously till March 19, 1879. During all this time he was thus commissioned the following two provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their yearly pay for each term of five years' of service. (Act of July 15, 1870, now Sec. 1262 of the Revised Statutes.)

He was paid for his services while thus serving as a commissioned officer in the U. S. Army merely what other officers of his grade were generally paid, and allowed no increase of compensation whatever on account of his prior length of service in the U. S. Army of the duration of about four years at the Military Academy. For this reason it is alleged he was short-paid for his services rendered during the time he was a commissioned officer as aforesaid (after July 5, 1838), and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists, or may exist, to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

Notwithstanding the clear and explicit provisions of law above cited, the accounting officers of the Treasury are now declining to yield to the rule therein laid down for the computation of the additional ration or allowance to be given to a commissioned officer for and on account of his prior length of service in the Army, although they have in some instances in the past permitted the said rule to govern in such computations. The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$1,900, and your committee, having fully considered the matter, can see no reason why the question involved

should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services rendered by a distinguished officer); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.



HEIRS OF HENRY A. SHADEL AND OTHERS.

MAY 11, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 227.]

The Committee on War Claims, to whom was referred H. R. 5603, a bill for the relief of the heirs of Henry A. Shadel, deceased; H. R. 5604, a bill for the relief of James Forgey; H. R. 5605, a bill for the relief of the estate of Edwin E. Saunders, deceased; H. R. 8375, a bill for the relief of the estate of Theodore J. Gillett; H. R. 5607, a bill for the relief of W. T. Scoville and John Kouns, surviving partners of George L. Kouns, deceased; H. R. 5608, a bill for the relief of Ammon McLaughlin, and H. R. 7300, a bill for the relief of the heirs of Dudley D. Smith, deceased, have had the same under consideration and beg leave to report as follows:

Your committee are of the opinion that these claims should be referred to the Court of Claims for findings of fact, and report herewith a resolution to that effect and recommend its adoption.



MRS. MARTHA STIFF.

MAY 12, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 228.]

The Committee on War Claims, to whom was referred the bill (H. R. 8430) for the relief of Mrs. Martha Stiff, submits the following report:

This is a claim for stores and supplies alleged to have been taken from the plantation of John G. Senter, deceased, of Gaylesville, Ala., during the late war, by United States troops. Mrs. Stiff is the sole surviving heir of John G. Senter, deceased.

It seems to your committee that an investigation by the Court of Claims is a matter of necessity before intelligent action can be had upon this case, and your committee report herewith a resolution referring the case to the Court of Claims under the provisions of the act of March 3, 1887, commonly known as the "Tucker act," and recommend its passage.



CLARA V. SHAW.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. VAN HORN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 5260.]

The Committee on Invalid Pensions have considered the bill (H. R. 5260) granting a pension to Clara V. Shaw, and submit the following report:

Charles H. Potter enlisted August 25, 1862, in Company C, Twenty-fourth Connecticut Volunteers, and died in service September 1, 1863; his widow, Clara V. Potter, was pensioned from that date to January 23, 1884, when she married John B. Shaw, who died August 13, 1891, leaving no property.

This petitioner is fifty-one years of age. It is shown by a statement signed by eighteen ladies of Norwich, Conn., that she maintained herself after the death of the soldier until her remarriage by working as a seamstress, and the same parties certify her good character and personal worthiness.

Your committee therefore recommend the passage of the bill after being amended by striking out the word "as" in line 6 and inserting in lieu thereof the word "former."



ROBERT HAMMOND.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PEARSON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7714.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 7714) granting an increase of pension to Robert Hammond, submit the following report:

The claimant was a soldier in the late war of the rebellion, enlisting in August, 1861, in Company A, Fifteenth Regiment Ohio Volunteer Infantry. At the battle of Shiloh, Tenn., on April 7, 1862, he was wounded by a shell in the right leg 4 inches below the knee-joint, which rendered amputation necessary, and in the same battle, while being carried off the field, he received a shell wound in the left leg below the knee, as shown by testimony of two comrades. Four days after receiving the wound in the right leg it was amputated, and on account of the stump constantly breaking and running the stump has been amputated twice since, the last amputation being in October, 1883, at a point 1 inch above the knee-joint; cicatrix and stump normal.

The claimant receives a pension of \$36 per month for amputation of the right thigh, but receives no rating on account of the wound in the left leg, which is described by the medical board as follows:

We find a large, perfectly white cicatrix on the inner aspect of left leg, $1\frac{1}{2}$ inches below the knee joint. It is $3\frac{1}{2}$ inches long and 3 inches wide—neither sensitive, adherent, or dragging. There is apparently some loss of tissue, but comparative measurements can not be made. There is loss of power to one-fourth degree in left leg due to wound.

The claimant alleges that on account of his great weight (222 pounds) he is unable to wear an artificial limb, and that he should receive the same pension as soldiers who, under the act of August 4, 1886, are pensioned at the rate of \$45 where the amputation is so near the hip or shoulder joint as to prevent the use of an artificial limb. In support of his allegation that he is unable on account of his weight to wear an artificial limb the affidavits of Dr. William T. Ramsey, Dr. G. L. Arnold, Dr. J. R. Downer, and Dr. J. C. Warne are submitted, corroborating his statements.

In view of the established fact that he is unable to wear an artificial limb, and the further fact that he receives no rating on the wound in the left leg, your committee believe that this is a meritorious case, especially as he would certainly receive a pension for wound in the left leg if his right leg was sound, and the passage of the bill is recommended, after first amending the same by striking out the word "fifty," in line 6, and inserting in lieu thereof the words "forty-five," and striking out the words "total disability," in line 7 and inserting in lieu thereof the word "amputation."

ELLEN DAY.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PEARSON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 5196.]

The Committee on Invalid Pensions have considered the bill (H. R. 5196) granting a pension to Ellen Day, and submit the following report:

The petitioner is the stepmother of Albert L. Day, who enlisted in Company I, Fifth Ohio Volunteers, April 20, 1861, and was killed in service August 9, 1862. His father, Berry Day, applied for pension in 1885, and his claim was rejected March 1, 1886, on the ground that he was not dependent on the soldier at the date of his death. He was subsequently pensioned by special act of Congress June 4, 1888, he being then aged and dependent, and if now living he would be pensionable under the act of June 27, 1890.

The father died April 19, 1889, and the accrued pension was paid to his widow, the petitioner. The soldier's mother died April 1, 1847, as shown by evidence in the Pension Office, and the petitioner was married to the soldier's father August 17, 1847.

Jane Merriman, of Cincinnati, Ohio, testifies that she was present at the marriage, at which time the soldier was a little child about a year and a half old; that from that time his stepmother cared for him with the same affection as if he were her own, and he showed a similar regard for her; also that the petitioner is now entirely destitute, and dependent upon her labor for her daily bread.

Lettie Reeder, of Cincinnati, Ohio, testifies that she well knew the soldier; that he called the petitioner his mother, and they displayed great affection for each other; also that the petitioner is now poor and destitute and dependent upon her own labor at sewing and dressmaking.

Your committee recommend the passage of the bill.

MRS. C. R. HAMILTON.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MCKINNEY, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7572.]

The Committee on Invalid Pensions have considered the bill (H. R. 7572) to pension Mrs. C. R. Hamilton, an army nurse, and submit the following report:

The petitioner served as "Sister Angela," and it is shown by the records of the War Department that "Sister Angela" served in "Satterlee" general hospital, West Philadelphia, as nurse from July 9, 1862, to November 11, 1864.

It is shown by testimony of W. A. Cutter, Edwin S. Carter, James F. Cushing, Thomas J. Keogh and Edw. W. Dager, of Wakefield, that the petitioner is a lady of excellent character and is in poor health; that she is poor and has a large family, several children being small; that the family has no means of support except their daily labor, and that the petitioner herself has to work hard to support her family.

Mr. Samuel K. Hamilton, an attorney, of Boston, Mass., states that he is not related to the petitioner, but knows her to be very estimable, and that she has reared a nice family by hard work and close economy; that her husband was a soldier, wounded at Gettysburg, and has heart disease and asthma; that he is not able to do manual labor, but earns something by traveling around as agent for sewing machines; that the petitioner is broken in health and unable to do work outside her family as formerly; that they have a small house and lot, incumbered by a heavy mortgage.

Your committee recommend the passage of the bill.

SUSAN LOMASNEY.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUTLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8398.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 8398) granting a pension to Susan Lomasney, submit the following report:

Susan Lomasney is the widow of William Mackey Lomasney, alias William Mackey, late of Company H, One hundred and seventy-ninth New York Volunteer Infantry, who served in said company from September 16, 1864, to June 8, 1865, the records showing honorable service.

The evidence on file with this case shows that this claimant has three children dependent on her for support, and that her only means of supporting herself and them is her own daily labor.

This claimant made formal application before the Pension Bureau, but her claim was rejected on the ground that the soldier's death was not shown, and claimant alleged inability to furnish evidence to establish fact of death.

The circumstances are as follows: Said soldier, William Mackey Lomasney, whose home was in Detroit, Mich., left that city August 7, 1884. His wife, the beneficiary of this bill, received a letter from him, dated at New York, a few days later. Subsequently he wrote to his wife from London, England, the last of such letters being received by this claimant in December, 1884, and bearing date London, England, November 30 of that year. She has not heard from him since that time, although in said letter said soldier stated that he expected to start home in a week or ten days.

She has made diligent search and inquiry of all his friends and relatives, and every other person likely to know about him, and has never been able to learn anything of him since that time.

Now, for more than eight years this claimant has mourned her said husband as dead, and your committee believes, from the evidence on file with this case, that he is, in fact, dead.

Wherefore your committee reports the bill to the House with the recommendation that it be amended by striking out line 8 of the bill, and inserting in its stead the words "act of June twenty-seventh, eighteen hundred and ninety," and as so amended the bill do pass.

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RESEARCH REPORT

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WILLIAM E. WOODBRIDGE.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 131.]

The Committee on War Claims, to whom was referred the bill (S. 131) referring to the Court of Claims the claim of William E. Woodbridge, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Patents of the present Congress, which is appended hereto and adopted as a part of this report.

Your committee recommend the passage of the bill.

[Senate Report No. 223, Fifty-second Congress, first session.]

The Committee on Patents, to whom was referred the bill (S. 131) "referring to the Court of Claims the claim of William E. Woodbridge for compensation for the use by the United States of his invention relating to projectiles, for which letters patent were ordered to issue to him March 25, 1852," respectfully report:

That bills similar to the one referred to the committee have been favorably reported from committees of the House and the Senate at different sessions of Congress, beginning with the Forty-ninth Congress.

The Committee on War Claims of the House has at this session made a full and favorable report of the case, which is appended hereto and adopted as a part of this report.

The passage of the bill is recommended.

House Report No. 177, Fifty-second Congress, first session.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 1306.]

The Committee on War Claims, to whom was referred the bill (H. R. 1306) referring to the Court of Claims the claim of William E. Woodbridge for compensation for the use by the United States of his invention relating to projectiles, for which letters patent were ordered to issue to him March 25, 1852, having considered the same and accompanying papers, submit the following report:

Dr. Woodbridge's invention consisted in applying to a projectile to be fired from a rifled cannon a ring or sabot of soft metal for the purpose of giving to the projectile a rotary motion.

The iron projectile was of an elongated ovoid form, and the rear section, from a point near the center to a point near the rear end, was surrounded by a soft metal collar, cylindrical on its outer surface, but its inner surface fitting closely to the iron projectile.

The operation is thus described in the specification:

A suitable charge of powder is to be introduced into the gun, and the ball and rifling placed in the position represented in Fig. 1, the rear of the ball being in contact with the charge of powder. The surface of the rifle ring exposed to the action of the gases formed by the inflammation of the powder being much greater in proportion to its inertia than that of the ball, the ring is driven forcibly forward upon the ball, so as to embrace it tightly and thus impart the rifle motion which itself has received from the grooves of the gun; and at the same time it is stretched to fill the bore of the gun completely, thus destroying the windage, and causing the ball to advance strictly in the line of the axis of the bore.

The application was filed February 11, 1852, and a patent was allowed and ordered to be issued on the 25th of March following. Two days previously to the allowance of a patent Woodbridge wrote to the Commissioner of Patents requesting that upon the issue or order to issue of a patent it might be filed in the secret archives of the office, in order that his ability to take out a patent in a foreign country might not be affected by the publication of the invention. To this letter the office replied on the 15th of April, 1852, informing Woodbridge that a patent had been ordered to issue on his application, and that, in accordance with his request, the papers had been filed among the secret archives of the office, *subject to his directions as to the time of issuing the same*. He had performed every requirement of the law, and no further payment was necessary for the issue of his patent, which depended thereafter on the Patent Office alone.

Not only had Woodbridge at this time taken means to secure his invention by patent, but had brought his invention to the knowledge of

the proper department of the Government and conducted a series of experiments with it at Fortress Monroe, of which detailed reports have been furnished the committee by the War Department. These experiments showed the superiority in respect of accuracy and penetration, now so well known, to be obtained by the use of rifled cannon with suitable projectiles, and the practicability of exploding shells by means of percussion fuses.

Dr. Woodbridge, relying on the action and statement of Commissioner Ewbank, above recited, did not call for the issue of his patent until December 31, 1861, when he addressed a letter to the Commissioner of Patents, calling attention to the case, and requesting the issue of the patent. During the interim a new Commissioner had been appointed, and changes in the rules adopted for the administration of business.

In answer to Woodbridge's last letter the Commissioner replied that the length of time he had allowed his invention to slumber was a bar to the grant of a patent, and referred to the thirty-fourth section of the printed rules, which prescribes that—

No application upon which a patent has been ordered to issue shall be retained in the secret archives more than six months from the day on which the patent was ordered to issue.

On receipt of this decision Dr. Woodbridge addressed the Commissioner as follows:

A letter from the Commissioner dated April 15, 1852, says, referring to my application, "a patent was ordered to issue thereon," and "the papers were filed in the secret archives of the office, subject to your directions as to the time of issuing the same," from which it appears to be the deliberate conclusion of the Commissioner that I should be permitted to receive my patent at such indefinite time thereafter as I might call for it.

If, therefore, it be granted that I have committed an error in leaving my patent so long uncalled for, I have certainly been led into it by the action of the office itself, and if the results should entail inconvenience on anyone the responsibility, it appears to me, must rest on the office rather than on me.

* * * * *

I must object to any disturbance of the decision of Commissioner Ewbank, as announced in his letter of April 15, 1852, such action being contrary to the rule of the office, which declares that "a decision deliberately made and approved by one Commissioner will not be disturbed by his successor." (See section 38 of Rules of Patent Office.) * * *

Judge Dunlop, in the case of Larrowes and Simpson's appeals, to which I respectfully refer if there should be any doubt as to the obligation of the rule, clearly expresses the opinion that the Commissioner has *no* right to reverse the decision of his predecessor.

To establish the date when section 34 of the printed rules went into operation, the House Committee on Patents of the Forty-eighth Congress, first session, under date of April 29, 1884, asked the Department of the Interior for the information, to which the Department replied as follows:

DEPARTMENT OF THE INTERIOR,
Washington, May 3, 1884.

SIR: Referring to your letter of the 20th ultimo, requesting certain information in connection with House bill 2859, for the relief of William E. Woodbridge, you are informed that the Commissioner of Patents, to whom the matter has been referred, reports that Rule 34 of the "Rules of Practice of the Patent Office" went into effect in 1854, but that the exact date can not be more accurately fixed.

A copy of your letter is inclosed at the request of Gen. McBride.

Very respectfully,

H. M. TELLER,
Secretary.

Hon. L. E. ATKINSON,
Chairman Subcommittee of Patents, House of Representatives.

The Secretary's letter shows that rule 34 of the "Rules of Practice of the Patent Office" went into force in 1854. Said rule certainly had no application to Woodbridge on the 15th of April, 1852, when Commissioner Ewbank informed Woodbridge that

A patent had been ordered to issue on his application, and that, in accordance with his request, the papers had been filed among the secret archives of the office, *subject to his directions as to the time of issuing the same.*

The Supreme Court of the United States, in the case of *Campbell v. James*, United States postmaster, decided January 9, 1882, settle the law most conclusively between the United States and its citizens on the subject of property in invention. The court says:

That the Government of the United States, when it grants letters patent for a new invention of discovery in the arts, confers upon the patentee an exclusive property in the patented invention, which can not be appropriated or used by the Government itself without *just compensation* any more than it can appropriate or use without compensation land which has been patented to a private purchaser, we have no doubt. The Constitution gives to Congress power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries," which could not be effected if the Government had a reserved right to publish such writings or to use such inventions without the consent of the owner. Many inventions relate to subjects which can only be properly used by the Government, such as explosive shells, rams, and submarine batteries, to be attached to armed vessels. If it could use such inventions without compensation, the inventors could get no return at all for their discoveries and experiments. It has been the general practice when inventions have been made which are desirable for Government use either for the Government to purchase them from the inventors and use them as secrets of the proper department, or, if a patent is granted, to pay the patentee a *fair compensation* for their use. The United States has no such prerogative as that which is claimed by the sovereigns of England, by which it can reserve to itself, either expressly or by implication, a superior dominion and use in that which it grants by letters patent to those who entitle themselves to such grants.

The Government of the United States, as well as the citizens, *is subject to the Constitution* and when it grants a patent the grantee is entitled to it as a matter of right, and does not receive it, as was originally supposed to be the case in England, as a matter of grace, and favor. (104 U. S. 356, and this case is cited with approbation by Walker on Patents, p. 107.)

The decision fully supports the justice of Dr. Woodbridge's claim for compensation for the use by the United States of his invention.

Nothing seems to have been wanting on the part of the inventor to make the invention available to the Government. He early conveyed to the proper department a practical knowledge of his invention and made strenuous efforts to introduce it into service, seeking, also, Congressional aid to extend its application to guns of the largest caliber. Though the invention had appeared too early to be at once appreciated, he had made it available for all subsequent time.

Modifications of Woodbridge's projectile might be, and doubtless were, patented by others, but it is obvious that only the *modification* could be the subject of a valid patent, and that it could not in any way restrict the use of the invention in any other form. In no other way could the Government have been more fully protected against false or invalid claims for its use than by the recited acts of the inventor.

The passage by Congress of a bill for Woodbridge's relief is strongly recommended, as will be seen from the appended letters, by the honorable Secretary of War and by the Chief of Ordnance.

A bill substantially the same as that now under consideration has been favorably reported unanimously by committees of the House during the Forty-eighth, Forty-ninth, Fiftieth, and Fifty-first Congresses, which failed through lack of time.

It is evident to the committee that Dr. Woodbridge's invention was

used by the Government, and they believe that both justice and sound policy require that he be duly compensated for its use. He has thus far received no remuneration.

Such a reference to the Court of Claims as he seeks seems eminently just, and the committee unanimously report the accompanying bill with the recommendation that it pass.

APPENDIX.

WAR DEPARTMENT,
Washington City, February 2, 1884.

SIR: I have the honor to acknowledge the receipt of your communication of the 21st ultimo, inclosing H. R. 2859, being for compensation to William E. Woodbridge for the use of his invention relating to projectiles for rifled cannon and asking the views of this Department thereon.

In reply I beg to advise you that your letter, with its inclosure, was duly referred to the Chief of Ordnance, and I inclose herewith a copy of his report, of January 31, 1884, together with copies of all papers on file in his office relative to the trial of the Woodbridge projectile at Fort Monroe in 1850, and a report on the same subject by Major Mordecai, of the Ordnance Department. This report, with its inclosures, it is believed, covers all the information at the disposal of the Department upon the subject, and the views of the Chief of Ordnance as expressed in his said report are concurred in by me.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Hon. ROBERT B. VANCE,
Chairman Committee on Patents, House of Representatives.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, D. C., January 31, 1884.

SIR: I have the honor to return letter from Hon. R. B. Vance, chairman House Committee on Patents, requesting the views of the honorable Secretary of War on the inclosed bill (H. R. 2859) "for the relief of William E. Woodbridge," who claims compensation for the use of his invention relating to projectiles for rifled cannon, and to report.

Inclosed please find copies of all the papers on the files of this office, being reports from Col. Huger, Ordnance Department, of the trial of the Woodbridge projectile at Fort Monroe in 1850, and a report on the same subject from Maj. Mordecai, Ordnance Department. It seems plain from these papers that the invention was a novelty to these officers, both highly distinguished ordnance officers of our Army, and well acquainted with all inventions and improvements relating to gunnery.

In a pamphlet printed by Dr. William E. Woodbridge in 1852, entitled "A plan for increasing the efficiency of cannon by giving the rifle motion to cannon projectiles," he says:

"The invention, which it is the design of this paper to notice, consists in the construction and application of a ring or sabot of extensible metal to be applied to the rear of a projectile, and to be fired from a rifle-grooved gun."

And again he says, describing the sabot:

"Its rear end is grooved in order that the thinner portions may act *valvularly* to prevent the escape of the gases between it and the sides of the bore and projectile."

The object as stated, and the groove to act valvularly, would seem to embody the principles involved in most of the projectiles used since 1852, and known as the expanding. There can be no doubt that Dr. Woodbridge was first, or among the first, in this field of invention, and the passage of the bill for his relief is strongly recommended.

Very respectfully, your obedient servant,

S. V. BENÉT,
Brigadier-General, Chief of Ordnance.

The Hon. SECRETARY OF WAR.

[Pamphlet referred to by the Chief of Ordnance in his letter to the Secretary of War, dated January 31, 1884.]

A PLAN FOR INCREASING THE EFFICIENCY OF CANNON BY GIVING THE RIFLE MOTION TO CANNON PROJECTILES, BY WILLIAM E. WOODBRIDGE, 1852.

The effects of artillery are so far relied upon as a means of success in military operations that any improvement in cannon or their ammunition is a matter of very considerable importance.

The improvements in this department during the last fifty years have been such as greatly to enhance the efficiency of artillery, and are chiefly the result of extended experiments in Europe and this country, which have done much to remove the empirical notions formerly prevalent among artillerists, and to establish principles which will ever form a part of scientific gunnery. The attention, however, of scientific men has been mainly devoted to the improvement of the plans already in use, while those who have sought to add to the efficiency of firearms by invention too generally neglected sufficiently to consider the principles involved, or the applicability of their machines for use in the circumstances for which they are intended.

The advantage of giving to a ball a motion of rotation about its axis corresponding with the axis of the bore of the gun, or, as it is commonly called, the rifle motion, has long been known and used in small arms; and the rifle, though unused in military service until adopted by the Americans in the Revolutionary war, has now extended its use to nearly every civilized nation.

The idea of giving the rifle motion to cannon projectiles seems to have been entertained as early as the year 1774, and though many trials have been made since that time, they have hitherto (unless we except those mentioned herein) been useful rather in pointing out the true difficulties to be overcome, and in exhausting the fanciful expedients which have been proposed, than in furnishing any really feasible plan.

The design of the earlier experimenters seems to have been confined to the correction of the deviations produced by the resistance of the atmosphere and the irregular motions of rotation usually acquired by cannon balls within the gun; but the fact, long since well ascertained in relation to small arms, that an elongated ball, if projected with the rifle motion, might be made to retain the same end foremost during its flight encouraged the idea that the same might be the result in relation to cannon balls, and has given increased importance to the attainment of a practicable plan for giving them the rifle motion. It would necessarily allow the use of balls of a form much less resisted by the air than spherical balls of the same weight, and would enable us to explode shells by percussion against the object at which they are fired.

The invention which it is the design of this paper to notice consists in the construction and application of a ring or sabot of extensible metal to be applied to the rear of a projectile, and to be fired from a rifle-grooved gun.

In the accompanying drawings, Fig. 1* represents the section of a portion of the cannon through its axis, with the projectile and ring or sabot in position, A being the cannon, B the ball, and c the sabot.

The same view of the projectile and sabot is given in Figs. 3 and 4. Fig. 5 is an end view of the sabot. Fig. 2 is a transverse section of the cannon, showing the form and position of the grooves (*e e*), which should be equidistant. The dotted lines *e e*, Fig. 1, also show the depth of the grooves.

The projectile, which is of cast iron, is ovoid in form, pointed at the forward end. The sabot is a ring of metal softer than the projectile or cannon, and capable of extension without rupture, whose exterior surface has the form of the bore, but which is sufficiently smaller than the bore to enter the gun freely without extraordinary cleaning; and the inner surface of which fits the surface of the projectile in the rear of its greatest diameter. Its rear end is grooved, as shown in Fig. 4, in order that the thinner portions may act *valvularly* to prevent the escape of the gases between it and the sides of the bore and projectile. This sabot may be cast of a composition of zinc and tin, or of lead, tin, and copper, in iron or brass molds.

The sabot should be driven on the projectile in the laboratory, and care should be taken to see that the valvular portion of the sabot fits the projectile closely.

A suitable charge of powder is to be introduced into the gun, and the projectile and sabot placed in the position represented in Fig. 1.

The surface of the sabot exposed to the action of the gases formed by the inflammation of the powder being much greater in proportion to its inertia than that of the ball, the sabot is driven forcibly forward upon the ball so as to embrace it tightly and thus impart the rifle motion which itself receives from the grooves of the gun; and at the same time it is stretched to fill the bore of the gun completely, thus destroying the windage and causing the ball to advance strictly in the line of the axis of the bore.

*The plates are omitted from this appendix.

The change in the form of the sabot, produced by the pressure of the gases, is illustrated by Fig. 6, which is a somewhat exaggerated representation of the sabot after firing, the dotted line showing its form before firing. The degree of alteration in the form of the sabot is dependent upon the difference of the diameter of the sabot and of the bore of the gun.

The rifle motion is not by this means communicated to the projectile strictly instantaneously, but somewhat gradually, the sabot turning a little upon the projectile during the first instants of their motion, though its hold upon the projectile is maintained so long as they receive the pressure of the gases. It is obvious that when the rifle motion is thus imparted in a *succession of instants* rather than *instantaneously*, the stress upon the projections of the sabot or grooves of the gun will be much less in any one of these short periods of time than it would be if the whole effect were produced in the same short period.

This is a peculiarity of great importance, as it obviates the great defects of the only modes of giving the rifle motion to heavy iron projectiles hitherto proposed, which are worthy of mention, namely, the attachment of projections of a soft metal to enter the grooves of the gun, and the casting of similar projections as a part of the projectile itself. The chief defect of the first of these modes is that the projections are generally stripped from their attachments by the shock to which they are exposed, and consequently the projectiles fail to take the rifle motion, and every modification of the latter mode must result in the rapid abrasion of the sides of the grooves of the gun when the projectile commences its motion, causing increased resistance to the motion of the projectile and great danger of bursting the gun.

The shells may be packed for transportation in the manner which will be understood from Fig. 7.

By permission of the Secretary of War some experiments were made in the autumn of 1850 to test the practicability of giving the rifle motion to cannon projectiles in the manner described.

The gun made use of was a bronze 6-pounder of 14 calibers length, weighing 809 pounds. It was rifled at Washington Arsenal. The shells were cast at a foundry in Washington, but owing to the want of suitable flasks for the purpose they were irregular in thickness. The experiments were made at Fort Monroe, Old Point Comfort, Va. The gun was mounted on a field carriage, and fired from a siege-gun platform.

The first three fires were made principally for the purpose of ascertaining the proper lengths to be given to the sabots. The shells had their fuse holes stopped with iron plugs. They were aimed by an officer of much skill and experience.

(1) *Firing to ascertain proper length of sabots.*

Number.	Weight of charge.		Elevation.	Range.		Lateral deviations.	
	Powder.	Shell and sabot.		First graze.	Extreme.	Right.	Left.
	<i>Pound.</i>	<i>Lbs. oz.</i>	<i>°</i>	<i>Yards.</i>		<i>Feet.</i>	<i>Feet.</i>
1	1	10 6	3	975	.....	18	69
2	1	10 6	3	1,089	.....	.....	.....
3	1	10 6	3	866	.....	.....	45
Mean.....	1	10 6	3	976	.....	44	.....

The great deviations show that the rifled motion was not properly given to the projectiles, though it is probable, from the helical course of their flight, that they made three or four revolutions on their own axis before striking.

The sabots were all recovered, and the examination proved them to have been too long.

For the next six fires the shells, which were of irregular thickness, were filled with tin, to give them as nearly as possible the character of solid shot. In accordance with the indications of the first three fires, the sabots were reduced to the length shown in Plate 4. The shells and sabots were each marked with a number and the position of the sabots on the shells was marked by corresponding lines on each.

The following table shows the result:

(2) *First six rounds with reduced sabot.*

Number.	Weight of charge.		Elevation.	Range.		Lateral deviations.	
	Powder.	Shell and sabot.		First graze.	Extreme.	Right.	Left.
	<i>Pound.</i>	<i>Lbs. oz.</i>	<i>°</i>	<i>Yards.</i>		<i>Ft. in.</i>	<i>Ft. in.</i>
1	1	11 15.7	2	834	Not found.	7 1	.....
2	1	11 13.5	2	763	Not found.	6	.....
3	1	11 11.6	2	817	1,800 yds.	.....	1 11
4	1	12 9.7	2	770	1,650 yds.	9	.....
5	1	12 9.8	2	748	1,520 yds.	.....	5 2
6	1	12 8.1	2	687	1,800 yds.	.....	5 3
Mean	1	12 3.4	2	770	1,642 yds.	3 feet 5.33 inches.	

A comparison of the deviations in this table with those of the former well indicates the result of giving the projectiles the rifle motion.

Each of the four shells found was much scratched on one side of the forward end, having struck on a gravelly portion of the beach.

The sabots were knocked off from three of them (Nos. 4, 5, and 6) at the first contact of the shell with the ground; No. 3 retained its sabot to its extreme range. The sabot was found to be driven on the shell about 0.15 inch, and rotated about $4\frac{1}{2}$ degrees, sufficiently to correspond with the twist of the rifling in about $6\frac{1}{4}$ inches of the bore. It is obvious that the forward motion of the shell must have exceeded this distance before it acquired a rotation corresponding with the grooves of the gun.

The sabot was stretched upon the shell so as to fill the bore of the gun, and could not be reëntered without considerable force.

It was observed by the man stationed to mark the first graze of the shells that they seemed to rise but 5 or 6 feet after ricochetting, while the horizontal distance passed over in the first bound was unusually great. The result might be expected from the small angle which the impinging surface of the shell makes with the surface of the ground, and corresponds with the great extreme range of the shells given above.

The following table gives the result of the first six fires at a target.

The target was constructed of yellow-pine timber and was 2 feet thick, its height being 10 feet and its breadth 12 feet.

The shells were each charged with 6 ounces of powder, and furnished with an experimental percussion fuse, which was designed to explode only upon receiving a severe shock. The fuses were inserted in the shells after the shells were introduced into the muzzle of the gun, requiring only to be pushed in with the finger.

The distance of the target from the gun was 600 yards.

(3) *First six rounds fired at target.*

[Distance 600 yards.]

Number.	Weight of charge.		Elevation.	Lateral deviations.	
	Powder.	Shell and sabot.		Right.	Left.
	<i>Pound.</i>	<i>Lbs. oz.</i>	<i>° ' "</i>	<i>Ft. in.</i>	<i>Ft. in.</i>
1	1	9 10	1	.....	4 7 $\frac{1}{2}$
2	1	9 5.4	1 30	(Missed to left.)	
3	1	9 10.5	1 45	(Went over in line.)	
4	1	9 15	1 30	3 0 $\frac{1}{2}$	.....
5	1	9 13.5	1 30	.....	.....
6	1	9 13.7	1 30	1 8 $\frac{1}{2}$	.....
Mean	1	9 8.7	.....	2 feet 4 $\frac{1}{2}$ inches.	

The first shell being fired at too low an angle, struck the ground in front of the target and ricocheted into it, penetrating 16 inches, point foremost.

The sabot of the second shell was recovered, and was found to be pierced with a large number of small holes, communicating between its rear end and its inner surface, probably in consequence of imperfect casting.

It will be observed that the elevation of the third round was 15' greater than that of the subsequent ones.

Nos. 4, 5, and 6 went through the target. All struck point foremost, as could be ascertained from the marks of the sabots in the holes made by the shells. Shell No. 4 was found 350 yards beyond the target. The fuse, which was extracted, was found to have been broken by the shock received in the gun.

Shell No. 5 burst 3 feet behind the target. The distance was ascertained from the marks left by its explosion on the side of a brace of the target. Shell No. 6 burst behind the target, probably about the same distance, though it could not be exactly determined.

Several rounds were subsequently fired at the target for the purpose of testing modifications of the fuse.

Three trials were made with charges of $1\frac{1}{4}$ pounds of powder (the service charge for 6-pounders) for the purpose of comparing the ranges of the shells with the ranges of 6-pound shot.

(4.) *To compare ranges.*

Number.	Weight of charge.		Elevation.	Range.		Lateral deviation.	
	Powder.	Shell and sabot.		First graze.	Extreme.	Right.	Left.
	Lbs.	Lbs. oz.	°	Yds.			Ft. in.
1.....	$1\frac{1}{4}$	9 7	2	853	(*)	.....	1 11
2.....	$1\frac{1}{4}$	9 6	2	769	(*)	.....	7 4
3.....	$1\frac{1}{4}$	9 12	2	882	(*)	.....	8 5
Mean.....	$1\frac{1}{4}$	9 8.3	2	834 $\frac{2}{3}$	.....	.....	5 5

* Not observed.

The Ordnance Manual gives 867 yards as the mean range of the 6-pounder gun with a solid shot and $1\frac{1}{4}$ pounds of powder.

The bore of the gun was repeatedly and carefully examined with the aid of a mirror, and it received no injury until the firing of the last shell, which burst in the gun.

This shell had been twice fired through the target and was reserved as of doubtful soundness. Three indentations were made near the middle of the chase of the gun.

On comparing the results of the firing given above with those obtained with smooth-bored guns, we have to regret the want of desirable data. The tables of artillery practice given in the Ordnance Manual make no reference to accuracy of firing, and but little minute information on this particular is accessible at the Ordnance Office. I have been unable to find any table of firing corresponding nearly with the first six rounds. The following statement of practice with the French 8-pounder (about equal in caliber to our 9-pounder) from the "Aide Mémoire," 1884, probably applies as nearly as anything I have been able to obtain:

The mean lateral deviation of 100 rounds at the distance of 500 metres (547 yards) was 2.3 metres (7 feet 6 $\frac{1}{2}$ inches), and at 800 metres (875 yards) 7 metres (22 feet 11 $\frac{1}{2}$ inches).

The three rounds of table (4) correspond pretty nearly in distance to this last. We may make the following comparison:

	Ft.	In.
Mean deviation of French 8-pound shot at 547 yards	7	6 $\frac{1}{2}$
Mean deviation of French 8-pound shot at 875 yards.....	22	11 $\frac{1}{2}$
Mean deviation of rifled-gun shell at 770 yards	3	5 $\frac{3}{4}$
Mean deviation of rifled-gun shell at 834 yards	5	5

Ten rounds of solid shot were fired by an officer of the Ordnance Department from a smooth-bored 6-pounder with the service charge ($1\frac{1}{4}$ pounds) of powder at the same target and from the same distance as the six rounds of table (3), principally for the purpose of comparing the penetrations. Four of these shots hit the target, six missing it. The mean penetration was 16 inches. The deviations are not known.

A table was also furnished me, by the kindness of Col. Huger, of the firing of 75 rounds of 6-pound shot with the service charge, at a target 10 feet high by 20 feet wide and 600 yards distant. The lateral deviations are given in feet. The number of hits was 49, of which the average deviation was just 4 feet. The number of hits on the central 12 feet of the target (or of which the deviations are set down as 6 feet or less) was 31, their average deviation 3 feet.

We will again compare, as follows:

The proportion of hits in firing at targets 600 yards distant is, in the table furnished by Col. Huger (central 12 feet), 1 to 2.4; ten rounds (6-pound shot), 1 to 2.5; table

(3) rifled gun, 1 to 1.5. The mean lateral deviation of the above hits was, in the table furnished by Col. Huger (central 12 feet), 3 feet. Table (3) rifled gun, 2 feet 4 inches.

The following statement was the only information furnished me on application at the Ordnance Office in regard to the deviations of firing at the distance of 600 yards:

[Extract from General Orders No. 10, 1844.]

ORDNANCE OFFICE, *Washington, February 17, 1844.*

* * * Of 114 fires from field artillery (6-pounder guns and 12-pounder howitzers) at targets from 400 to 600 yards distant, there were 37 hits, rather more than one in four shots. * * *

G. TALCOTT,
Lieutenant-Colonel Ordnance.

Gen. R. JONES,
Adjutant-General, U. S. A.

The size of the target is not given, and no accurate comparison can be made. Of the whole number of shells fired at the target from the rifled gun, one-third hit the target; and their average deviation was a little less than 22 inches. Some of these shells were very defective, the best being used in the first rounds.

The superiority of the firing of the rifled gun is markedly seen in its comparative penetration.

The 6-pound shot fired with $1\frac{1}{4}$ pounds of powder penetrated 16 inches, while the shell fired with 1 pound of powder went through the target (24 inches) and still retained a great velocity, as is evident from the distance at which the shells exploded behind the target, although they were fired by percussion against it.

This advantage in regard to penetration is doubtless the result of the following causes: The prevention of the loss of the force of the powder by windage, as already explained; the decreased resistance of the air to the projectile, and lastly, the advantageous form of the shell for penetration. The effect of the first two of these causes is also seen in comparing the mean range of the three shells fired with $1\frac{1}{4}$ pounds of powder with the mean range of 6-pound shot with the same charge and at the same elevation as given in the Ordnance Manual. Although the weight of the shell exceeds that of the shot more than 50 per cent, its range lacks less than 4 per cent of being equal.

The advantages of the proposed plan over the use of ordinary smoothbored guns, if we may deduce them from the foregoing experiments, may be expressed in the following summary:

- (1) The greater effective force or penetration of the projectile.
- (2) The greater accuracy of firing.
- (3) The ability to explode shells by percussion against the object at which they are fired.
- (4) The flattened form of the ricochet, which renders ricochet firing much more destructive.

(5) The greater durability of the gun, in consequence of the prevention of the lodgments usually formed by the bounding of the ball in the bore.

(6) It will necessarily follow from the facts that the same initial velocity may be imparted to the proposed shell, and that its resistance to the air is less; that greater ranges may be obtained by the proposed plan than are possible with spherical shot.

It would be but stating the converse of these advantages to say that guns and ammunition of equal efficiency would have less weight and more transportability.

The service of the gun is rendered no more complex, and if any increase of time is required in loading it will be only in presenting the ball properly for entering the gun, and the whole time consumed in charging the gun will be much less than is always required for accurate aiming.

The importance of these advantages undoubtedly varies in different departments of service. It is probably greatest in siege, seacoast, and naval service.

In siege service great penetrative force of the shot or shells, accuracy of firing, long ranges, and transportability of guns and ammunition are all necessary in the highest degree.

The explosion of shells by percussion will probably be of greatest importance in firing against shipping. Great want of uniformity in the distance at which shells will explode when fired with the common fuses, even though perfect uniformity were attained in the time of their burning, will always occur, in consequence of the variation in the time of flight of shells fired under apparently the same circumstances; and when to this is added the difficulty of a correct estimate of distances, the probability of exploding a shell at any particular place will be seen to be exceedingly small. It is also a matter of great difficulty to lodge a shell in a ship's side, since the conditions to be fulfilled include the weight of the charge, the distance, and the angle of

the ship's side with the line of fire. In the use of percussion shells, however, the velocity most favorable to accuracy may be used, and these difficulties are entirely avoided.

The effect of the explosion of a large shell between the decks of a ship of war can hardly be anticipated. The accidental explosion of a 10-inch shell on board the English practice ship *Excellent* is stated to have put 100 men *hors du combat*.

Long ranges and accuracy of firing are eminently important in seacoast service.

The estimated importance of long ranges and great penetrative force in the naval service is evinced by the introduction of guns of heavy caliber. The decreased weight of the guns, and the diminished force of recoil consequent on the more economical use of the explosive force of the powder in producing equivalent effect, would doubtless be desirable.

With the desire that the value of the plan proposed may be fully tested by guns of heavy caliber, and compared with the unrifled cannon now in use in the various points affecting its utility in the different branches of service, Congress is petitioned for the necessary aid.

WILLIAM E. WOODBRIDGE.

DECEMBER, 1852.



ALEXANDER WARREN.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PATTON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 822.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 822) for the removal of the charge of desertion from the name of Alexander Warren, late a private in Company K, First Regiment Kentucky Volunteers, have had the same under consideration, and herewith submit the following from the records of the War Department as a part of this report:

Case of Alexander Warren, late private in Company K, First Regiment of Kentucky Cavalry.

RECORD AND PENSION DIVISION, February 19, 1892.

It appears from the records that this soldier was enrolled in Madison County, Ky., September 20, 1861, and he is reported present or properly accounted for to February 29, 1864, excepting an absence without leave from November 1, 1862, to February 25, 1863. On the company muster roll to August 31, 1864 (a six months' muster), he is reported as having deserted May 1, 1864, and killed by a citizen at his home on July —, 1864. Company muster roll dated December 31, 1864, reports him deserted May 1, 1864, and killed at his home July 10, 1864.

The following is a synopsis of the testimony heretofore submitted to the Department in connection with application for removal of the charge of desertion, to wit:

Fanny Warren, the soldier's mother, testified that about May, 1864, while in camp near Nicholasville, Ky., her son was sent for to visit affiant, she being very sick at the time and not expected to live; that he told her he had permission to come to see her, as the regiment was about to start south in a few days, and that he had orders to meet the command at Somerset, Ky., but he found her condition so bad that the neighbors requested him to stay a few days longer, which he did, the regiment moving forward and thus leaving him; that about June, 1864, he started back with William Layton, of his regiment, and that when they got into the mountains they were advised to go back, as they could not get through on account of bushwhackers, which he did; that as affiant was again taken sick he remained with her, though declaring he would rejoin his command as soon as she was able to be left alone, but that he was killed in July, 1864, while trying to make a rebel soldier give up a United States mule upon which the rebel was riding at the time, her son being killed while trying to defend the property of the United States.

William M. Layton, late a private in Company G, First Kentucky Cavalry, to whom reference is made by last affiant, corroborated the mother's statements so far as they related to him, and further declared that when they returned Warren was killed near his home, but under what circumstances affiant does not know.

Thomas Reynolds, a neighbor, testified that Warren was killed about July, 1864, near his home, but that he knew nothing of the circumstances attending his death; that the soldier's mother was sick at the time, and had been sick for some time prior to his death.

Mrs. Mildred Henderson and James Cotton, in separate affidavits, corroborated the several statements of the soldier's mother as to her sickness, the soldier's return home, his attempt to get through the mountains, and his death at the hands of one George Simes, who had in his possession a Government mule.

A. Statts testified that he was well acquainted with Warren; knew that he was home and that his mother was sick and not expected to live; that the soldier assisted his mother in buying such things as she needed; and that in July, 1864, he was killed in a difficulty with one George Simes over a United States mule or horse.

On March 11, 1886, the attorney in the case was informed that, "Unless it can be satisfactorily established by the testimony of former company or regimental officers that the within-named man left his command with authority and was so absent when killed, the case can not be favorably considered."

Under date of November 1, 1890, the mother testified that she had written to Col. Silas Adams, who had given her son authority to go home, but could get no answer from him; that while her son was at his home, which was on the road traveled by the soldiers passing from Camp Nelson to Madison County, Ky., he wore Government clothes, and that he saw and talked with the soldiers as they passed, and if he had not had a pass he would have been arrested.

Christopher Willis testified, October 28, 1890, that he was a private in Company G, First Kentucky Cavalry, and was well acquainted with Warren; that he well remembered that about April, 1864, while the regiment was at Nicholasville, Ky., one John W. Kersey, who was a member of Company K, First Kentucky Cavalry, went to his home in Madison County, Ky., in the neighborhood of Warren's mother, and that when he returned to the regiment he brought back word that Warren's mother was very sick and not expected to live and wanted her son to come home to see her; that he (affiant) went with Warren and Kersey to the colonel of the regiment, Silas Adams, who gave Warren permission to visit his sick mother, who lived about 10 miles from camp; that in a few days affiant went home, and started back in company with Warren and one William Layton, but was advised not to go farther on account of the presence of bushwhackers, so they all returned; that about July, 1864, Warren was killed by one George Simes, a rebel soldier, who was mounted upon a United States mule, but who claimed that he had deserted the rebel army; that word having been conveyed to Warren that Simes was mounted on said mule, he, with affiant, went to the store kept by A. Statts, about one-half mile up the road, and that in endeavoring to gain possession of the mule, Warren was shot, affiant firing several shots at the rebel soldier, who succeeded in getting away, on account of darkness. (Willis and Kersey appear to have been present with their respective companies on August 31, 1864).

On November 18, 1890, the Department held that the testimony submitted was not sufficient to warrant favorable action, and the application was therefore denied.

Since that date the status of the soldier has not been changed by the introduction of new testimony.

Respectfully submitted,

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

The SECRETARY OF WAR.

It is here shown that the soldier enlisted in Madison county, Ky., September 20, 1861; that he served faithfully until May 1, 1864, at which date he is reported as a deserter and as killed at his home on July 10, 1864, two months and ten days from the time he left his command.

One of his comrades testifies that soldier procured consent of his colonel to visit his mother who was reported as very sick and but 10 miles from camp; that in a few days after his reaching home he, with two other soldiers, started back to rejoin their commands, but was deterred from so doing by a report that the enemy was in the neighborhood, when they returned home where his mother was yet sick, and on July 20, while attempting to recapture a Government mule from a Confederate soldier, he was killed.

In view of all the circumstances your committee recommend that the bill do pass.

MONTGOMERY M. TUTTLE.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PATTON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 6970.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6970) to remove the charge of desertion from the name of Montgomery M. Tuttle, submit the following report:

Montgomery Tuttle was enrolled at Clinton, Me., December 17, 1863, in Company F, Twenty-ninth Maine Volunteers, to serve three years. He is reported present to April 30, 1864, and on subsequent rolls to December 31, 1864, he is reported absent sick in hospital at New Orleans, La. On rolls for January and February, 1865, absent without leave since January, 1865. March and April, 1865, he is reported as deserted from hospital in Pennsylvania January, 1865. Hospital records show him admitted to post hospital at Alexandria, La., May 8, 1864, with diarrhea, and transferred to general hospital May 22, 1864, as admitted to marine general hospital at New Orleans, with same disease, and was furloughed August 1, 1864, but the time for which he was furloughed is not stated.

Claimant, in affidavit executed October 9, 1889, states that at the time he enlisted he was but 15 years and 6 months old; that he ran away from home and enlisted without the permission of his parents; that while he was in the Red River campaign he was taken sick and was sent to the hospital at New Orleans; that he remained at said hospital, afflicted with typhoid fever, for about four months, when he was sent to his home in Maine on sick furlough for thirty days; that on the expiration of said furlough he was still sick and confined to his bed and unable to return, and when his health was partially restored his father refused to allow him to return.

October, 1889, Lydia D. Holt, mother of soldier, under oath corroborates the statements of soldier as to his age and circumstances connected with his return home and sickness while there, as also to the father preventing his return after recovery. This testimony is also corroborated by the testimony of two brothers of the soldier, and also by three neighbors.

Your committee has carefully considered the evidence in this case, and in view of the youth of the soldier, his long sickness, and the restraining influence of his parents, recommend that the bill be amended by adding after line 9 of the printed bill the words, "*Provided*, That no pay or allowances shall become due by virtue of this act," and as so amended that it do pass.

WILSON KALE.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWERS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 5780.]

The Committee on Military Affairs have had under consideration the bill (H. R. 5780) for the relief of Wilson Kale, and find that the soldier enlisted as a private in Company G, Sixth California Volunteers, November 19, 1863, to serve three years, and served faithfully until March 14, 1865.

The testimony shows that he was a minor and that a corporal of said company deserted the said company at the same time, and the soldier claims he was persuaded to leave by said corporal. The captain of the company testifies that the regiment was at the time, March, 1865, stationed at Monterey Barracks, in southern California, and never performed any military service after that date.

In view of the faithful service of the soldier from date of enlistment until March 15, 1865, and in view of the youth of the soldier, the committee recommend that the bill do pass.

The report from the War Department is herewith submitted.

Case of Wilson Kale, late private, Company G, Sixth California Infantry Volunteers.

RECORD AND PENSION DIVISION, *February 19, 1892.*

Wilson Kale was enrolled as a private in Company G, Sixth California Volunteers, November 19, 1863, to serve three years, and appears to have served faithfully until March 14, 1865, when he deserted from Monterey Barracks, Cal., never returning to military control, although his company remained in service until October 31, 1865.

In an application for removal of the charge of desertion, the soldier declared under oath, June 9, 1890, that when he enlisted he was a minor (born in December, 1844), and that he entered the service without the consent of his parents; that he had two brothers in the army during the war, one of whom was killed October, 1864, at Allatoona, Ga.; that he left his command without intending to desert, and that as the war closed soon afterwards he did not believe it was necessary to return to military control.

His application for relief was denied June 14, 1890, on the ground that he did not serve until May 1, 1865, and that it did not appear from his sworn statement that he was prevented from completing his term of enlistment by reason of disability contracted in the line of duty.

Since that date the status of the case has not been changed, either by the introduction of new testimony or by legislation.

Respectfully submitted.

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

The SECRETARY OF WAR.

O

CHARLES P. ANDERSON.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 3827.]

The Committee on War Claims, to whom was referred the bill (H. R. 3827) for the relief of Charles P. Anderson, submit the following report:

This is a claim for pay for services rendered prior to muster by Charles P. Anderson, formerly first lieutenant Company B, Second Regiment Arkansas Infantry Volunteers.

It appears from the petition and evidence filed in support thereof that Charles P. Anderson was appointed first lieutenant of said company and regiment on September 10, 1863. He was mustered into service as first lieutenant Company B, Second Arkansas Infantry Volunteers, to date from February 16, 1864, to fill an original vacancy. He tendered his resignation as such September 14, 1864, which was accepted September 19, 1864.

By the act of Congress approved June 3, 1884, it was intended, by a general bill, to give relief in this class of claims, and it appears that Mr. Anderson presented his case to the War Department under the act, and that his case has been decided adversely, because—

There is no record of a commission or appointment having been issued for him as of the grade and organization named; there was then no governor of Arkansas.

In the latter part of the summer of 1863 the Secretary of War transmitted to Maj. Gen. John M. Schofield, then commanding the Department of the Missouri, authority to organize and equip Union soldiers from citizens of Arkansas. In conformity with that authority Gen. Schofield, in paragraph 5 of Special Order No. 238, dated at St. Louis, Mo., September 1, 1863, put Brig. Gen. John McNeil, commanding the District of Southwest Missouri, in charge of the organization of the troops. Gen. McNeil was also instructed to appoint some officers to take immediate charge of organizing the troops. The officer thus appointed was authorized to recommend, with the concurrence of Gen. McNeil, competent and efficient men to fill the positions of company officers in the various companies raised, such officers to be taken as far as practicable from citizens of Arkansas, the recommendation so made to be forwarded to department headquarters for reference to the Secretary of War. In pursuance of these orders M. L. Stephenson was appointed by Gen. McNeil to take immediate supervision of the organization of the Second Arkansas Infantry by paragraph 7, Special Order

No. 170, dated at Headquarters District of Southwest Missouri, Springfield, Mo., August 31, 1863. Charles P. Anderson was appointed first lieutenant of Company B, Second Regiment of Arkansas Infantry, under this authority, on the 10th of September, 1863.

While the decision of the War Department may be in accordance with the law, the fact remains that from September 10, 1863, to February 16, 1864, Anderson was on duty and recognized as first lieutenant; that his services as such were accepted by the Government. Having obtained the benefit of Anderson's services, the Government ought not to set up a technical plea in bar of its obligation to make compensation therefor, and your committee is of opinion that payment should be made Mr. Anderson.

Your committee therefore recommend the passage of the bill with the following amendment:

In line 7 strike out "second lieutenant" and insert "first lieutenant."

O

PUBLIC PARK, NEW BEDFORD, MASS.

MAY 13, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BELKNAP, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 8420.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 8420) granting the use of certain lands to the city of New Bedford, Mass., for a public park, submit the following report and recommend its passage with amendments:

The prime object of this measure is to allow the city of New Bedford, Mass., the use of a part of the military reservation at that place as a public park and to afford said park police protection.

All improvements are to be made by the city of New Bedford, under the supervision of the Secretary of War, without expense to the Government, and, by the provisions of the bill, the Government of the United States lose no rights which it now holds. The measure is recommended by the War Department, and your committee believe it will result in good to both the Government and the city of New Bedford.

The communication of the War Department and other authorities are appended hereto and made a part of this report, and your committee recommend the bill do pass.

ENGINEER'S OFFICE, U. S. ARMY,
Newport, R. I., December 4, 1891.

MY DEAR SIR: Your letter relative to Fort Clark has been forwarded to the Chief of Engineers with favorable recommendation. It appears, however, very doubtful whether the Secretary would feel authorized to take action in the matter without an act of Congress.

Yours, truly,

R. LIVERMORE,
Major of Engineers.

HON. CHARLES S. RANDALL,
New Bedford, Mass.

OFFICE OF THE CHIEF OF ENGINEERS, U. S. ARMY,
Washington, D. C., December 7, 1891.

SIR: Maj. Livermore, by indorsement of the 4th instant, has referred to this office your letter of November 17, 1891, referring to the Government land at Clarks Point and its prospective control by the New Bedford board of public works.

In the case of a like use of the Fort Hale tract by the town of New Haven, authority was obtained therefor by an act of Congress, and it is thought the same course is necessary to obtain the proposed use of the Clarks Point tract.

Very respectfully, your obedient servant,

THOMAS LINCOLN CASEY,
Brig. Gen., Chief of Engineers.

HON. CHARLES S. RANDALL,
House of Representatives, Washington, D. C.

ENGINEER OFFICE, U. S. ARMY,
Newport, R. I., May 3, 1892.

SIR: Yours of the 2d instant is duly at hand as regards the fort at Clarks Point reservation.

The official papers have not reached me as yet, but I hasten to reply to yours, so as to, if possible, hear from you again before they get here.

My present knowledge of the question of transfer of Government property to a city for use as a park is somewhat limited for want of experience; but I see no special objections in the case of Fort Clarks Point. Moreover, the special changes you suggest as to the old buildings, light-house, and road seem as if they might be quite natural and proper changes in the details of the subsequent improvement of the grounds as a park.

However, there are some points in the phraseology of the present reading of the bill as you send it to me (H. R. 8420, of April 27, 1892) which seem to me to need modification.

In some other past cases of such transfers I have been informed that after the transfer ditches have been filled and embankments removed and other changes made without waiting for the approval of the War Department, and after those things were done there appeared to be no means of redress. Now, I think any new act should be doubly explicit upon such points. I have no doubt of the good and fair intent of the present reading of this special bill, but still some future city official of New Bedford in authority might in my opinion interpret it differently from what is now evidently intended, and think that the Secretary of War's control ended with the turning over of the land.

In the second place, it can hardly be expected that all future improvements can be given in detail immediately, before the land is turned over; and yet the first proviso apparently requires it. There will undoubtedly be many improvements suggested from time to time afterwards, as to which the War Department should have some control.

In the third place, there is no penalty for the violation of the privileges thus conceded to the city. The third proviso allows the United States to resume possession only when it requires the use of the land for other purposes.

I think that to prevent the United States from future unnecessary trouble, the phraseology of the first and third provisions should be changed somewhat, viz:

First proviso, lines 15 to 20, to be changed to read as follows:

"First. That no use of said land shall be begun by the said city until after general plans of said improvements shall have been submitted to the Secretary of War, and shall have been approved by him, and the portion of said tract of land owned by the United States to be used for such stated purposes shall have been specially designated by him. And, further, that no hollows shall be filled, nor embankments removed, nor structures built, repaired, altered, or removed, nor improvements of any sort begun, until the extent and plans of such proposed work shall have been described in detail to the Secretary of War and shall have received his approval."

Third proviso, line 26, to be changed to read as follows:

"In said tract and the right to resume immediate and entire possession whenever either of the above provisions shall have been violated, and also to resume possession and occupy."

With these modifications I see no objections to the suggested bill.

Very respectfully, your obedient servant,

W. H. BIXBY,
Captain of Engineers.

Hon. CHARLES S. RANDALL, M. C.,
House of Representatives, Washington, D. C.

WAR DEPARTMENT,
Washington, May 9, 1892.

SIR: I have the honor to acknowledge the receipt of your reference of House bill 8420, Fifty-second Congress, first session, granting the use of certain lands to the town of New Bedford, Mass., for a public park, and in reply to invite your attention to the inclosed report of the Chief of Engineers, dated the 9th instant, and to a copy of the report of Capt. W. H. Bixby, Corps of Engineers, dated the 7th instant, as also to an amended copy of the bill which is submitted by the Chief of Engineers.

As amended the Department recommends favorable legislation upon the bill.

Very respectfully,

S. B. ELKINS,
Secretary of War.

The CHAIRMAN OF THE COMMITTEE ON MILITARY AFFAIRS,
House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., May 9, 1892.

SIR: I have the honor to return herewith communication of the chairman of the House Committee on Military Affairs, transmitting, with request for the views and recommendations of the War Department, H. R. 8420, Fifty-second Congress, first session, a bill "granting the use of certain land to the town of New Bedford, Mass., for a public park," with a copy of a report thereon dated May 7, 1892, by Capt. W. H. Bixby, Corps of Engineers, to whom the bill was referred.

Capt. Bixby recommends the amendment of the bill in the following particulars:

In the title, in line 3, in line 9, and in line 21.

No objection is seen to the passage of the bill, amended as indicated.

In addition to the foregoing modifications, the following corrections of typographical errors in the bill are suggested:

In line 4, "an" should be "and;" in line 12, "last" should be "east," and insert a comma after "east," and a comma after "south;" and in line 13, insert a comma after "avenue."

A copy of the bill, amended in accordance with these recommendations, is inclosed herewith.

Very respectfully, your obedient servant,

THOS. LINCOLN CASEY,
Brig. Gen., Chief of Engineers.

Hon. S. B. ELKINS,
Secretary of War.

ENGINEER OFFICE, U. S. ARMY,
Newport, R. I., May 7, 1892.

GENERAL: In reply to letter from your office dated the 2d instant, I have to submit the following report on House bill No. 8420, Fifty-second Congress, first session, "granting the use of certain lands to the city of New Bedford, Mass., for a public park."

Clarks Point reservation, about 2 miles from the city of New Bedford, is at the southern end of a long point of land. It contains one three-story stone fort, two-thirds completed and two-thirds armed. No work has been done on the fort since 1873. The site of this fort and reservation should be retained by the United States for defensive purposes. I see, however, no objection to the occupation of this Clarks Point tract as a public park, subject to the conditions of the House bill, with the modifications which are indicated on the copy herewith returned.

Very respectfully, your obedient servant,

W. H. BIXBY,
Captain of Engineers.

Brig. Gen. THOS. L. CASEY,
Chief of Engineers, U. S. Army, Washington, D. C.

BOARD OF PUBLIC WORKS,
New Bedford, Mass., April 23, 1892.

SIR: At a meeting of the board of public works, held on the 18th day of April instant, sitting as park commissioners, the following vote was passed, viz:

"That this board requests the Hon. Charles S. Randall, M. C., to secure such legislation as will enable the park commissioners to become the custodians of the Government lands on Clarks Point, with a view of using them for park purposes."

Attest:

DANIEL B. LEONARD,
Clerk.

Hon. CHARLES S. RANDALL,
Washington, D. C.

NEW BEDFORD, MASS., November 17, 1891.

MY DEAR SIR: I beg leave to present to you a project which if it can receive the approval of the War Department will add greatly to the pleasure and health of the citizens of New Bedford, improve vastly in appearance the Government property on Clarks Point, and place the property in the custody of parties who will care for it and protect it from all trespassers.

We have a beautiful drive 4 miles around Clarks Point with water on both sides

and a fine view of Buzzards Bay and the distant islands on Vineyard Sound. When it was decided to build a fort on Clarks Point, the Government bought about 60 acres of land there, and the fort was built on the Point, and our road was turned back from the line of the shore to a point west of the fort. Many buildings of a cheap kind were put up during the war for the temporary accommodation of soldiers which are now entirely worthless, gone to decay and unsightly. The fort is never garrisoned and is in charge of an ordnance sergeant who faithfully performs his duty, but can not prevent to a greater or less extent, trespassing on the unused and unoccupied 50 acres outside of the fort proper.

If the Secretary of War would permit it, our board of public works would I am confident restore the road to its water-line boundary; grade the land around the fort; become the custodian of the 50 acres of unused land; plant it with trees, and make a beautiful park, and hold it carefully protected as Government property subject at all times to the orders of the Department.

I have said nothing to any of our city officials about this matter, preferring first to learn if it can be done. I shall feel much gratified if you can recommend its being done.

Yours truly,

CHARLES S. RANDALL.

Maj. WM. R. LIVERMORE,
U. S. Engineer Corps, Newport.

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ADDITIONAL LAND OFFICE IN NEW MEXICO.

MAY 13, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SMITH, of Arizona, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany H. R. 6180.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 6180) to establish an additional land office in the Territory of New Mexico, having had the same under consideration, report it back with sundry amendments and recommend that it be passed.

The bill proposes to establish an additional land office at Socorro, N. Mex., and to create an additional land district. New Mexico is nearly 400 miles square and comprises 78,374,373 acres of land. A large proportion of this is still a part of the public domain. The sales of land for the year 1891 amounted to \$92,509.76.

During the past year over 1,000,000 acres of public land in New Mexico have been reclaimed by irrigating systems, so that during the present year a large increase in sales as well as in the homestead entries will be shown. There are now but four land offices in the whole Territory, two in the northern and two in the southern part.

The situation of the proposed new land office at Socorro is almost in the geographical center of the Territory. Socorro is more than 150 miles from the nearest land offices—Santa Fe in the north and Las Cruces in the south. It is a town of about 1,600 inhabitants, and is the seat of the Territorial School of Mines. It is the center of the mining interest of the Territory. Two large smelters are located here.

The district created by this bill consists of the two counties of Socorro and Valencia. These are described in a recent publication by the Territorial Bureau of Immigration as follows:

Socorro County, Socorro county seat, has an area of 8,939,520 acres and a population of 10,875. There are considerable mining interests, the mines of the Magdalena Mountains bearing rich deposits of gold, silver, lead, and copper. Several reduction works are at or near Socorro; also, in the westernmost part of the county there are rich, well-developed mining properties; the intervening plains and valleys are covered with herds of cattle and sheep. Lumbering is done in almost all the mountainous portions of the county, where fine forests cover the higher locations. The valleys of the San Francisco and the Rio Grande are well cultivated, and the fruit-raising in the latter, mostly grapes and peaches, gives excellent results.

Valencia County, Los Lunas county seat, with an area of 2,651,760 acres and a population of 15,417, produces wheat, corn, oats, rye, and barley, and the grape culture of the Rio Grande Valley is noted; other fruits are raised, especially peaches, by the tens of thousands of pounds; lumbering is followed in the pine forests covering the Zuñi Mountains. Cattle-growing and sheep-raising are the principal industries.

The population of these two counties, according to the last census, was 23,471, the county of Socorro alone showing an increase of 21.84 per cent since the preceding census. New mines are constantly being

opened in this district, and the number of mineral entries is rapidly increasing. The Atchison and Santa Fe Railroad has recently constructed a branch of more than 50 miles into the mining regions, and the Rio Grande Canal and Irrigation Company is making improvements in the water supply which will result in opening to settlement a large tract of valuable farming lands now forming part of the public domain. When this supply is completed a large increase of entries from this vicinity is confidently expected.

The interests of the people of New Mexico imperatively require the location of this land office. The distances of the other offices is so great as to lead to the utmost inconvenience. The demand for this new office comes from all persons residing in the proposed district, without regard to party. The creation of this new office is equally to the advantage of the Government, as the opportunities for fraud in the location of lands are very greatly diminished by the proximity of the land offices to the lands subject to entry.

The committee recommend that the bill do pass as amended.



LEGAL REPRESENTATIVES OF THOMAS L. ALEXANDER.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8724.]

The Committee on War Claims, to whom was referred the bill (H. R. 8724) entitled "A bill for the relief of the legal representatives of Thomas L. Alexander," report:

Thomas L. Alexander served in the U. S. Army as a cadet at the West Point Military Academy for about four years prior to July 1, 1830, when he was commissioned second lieutenant Sixth Infantry in the U. S. Army, and served therein continuously as a commissioned officer till February 24, 1881. During all this time he was thus commissioned the following two provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per centum of their yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services while thus serving as a commissioned officer in the U. S. Army merely what other officers of his grade were generally paid, and allowed no increase of compensation whatever on account of his prior length of service in the U. S. Army of the duration of about four years at the Military Academy. For this reason it is alleged he was short-paid for his services rendered during the time he was a commissioned officer as aforesaid (after July 5, 1838), and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists, or may exist, or to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

Notwithstanding the clear and explicit provisions of law above cited the accounting officers of the Treasury are now declining to yield to the rule therein laid down for the computation of the additional ration or allowance to be given to a commissioned officer for and on account of his prior length of service in the Army, although they have in some instances, in the past, permitted the said rule to govern in such computations.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$2,000, and your committee having fully considered

the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services rendered by a distinguished officer); it only asks Congress for what it frequently granted by it to the capitalist and property claimant, and that is that the claimants may go before a competent tribunal and prove the justness of their claim if they can.

The committee recommend that the bill do pass.



HENLEY W. CHAPMAN.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8705.]

The Committee on War Claims, to whom was referred the bill (H. R. 8705) entitled "A bill for the relief of Henley W. Chapman, administrator of the late William Chapman," report:

William Chapman served in the U. S. Army as a cadet at the West Point Military Academy for four years next preceding July 1, 1831, and as a commissioned officer in the U. S. Army from July 5, 1838, to July 15, 1870. During all the time he thus served as a commissioned officer the following provision of law was in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258. act of July 5, 1838.)

He was paid for his services in the said interval of time from July 5, 1838, to July 15, 1870, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of service of about four years in the U. S. Army at the Military Academy. For this reason it is alleged he was short-paid for his services as a commissioned officer, rendered during said interval of time from July 5, 1838, to July 15, 1870, or in about four-fifths thereof, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes to about the sum of \$2,000, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

FRANCIS J. KELLY.

MAY 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWERS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 6248.]

Your committee states that on the investigation of the facts of this case they find Francis J. Kelly enlisted and served three months in the Forty-third Pennsylvania State Militia, as a musician, before he was 16 years of age; he was mustered out of said regiment August 13, 1863, and enlisted as a private in company K, Nineteenth Regiment Pennsylvania Cavalry, on the 22d day of August, 1863; received an injury in the line of duty and was sent to hospital at Philadelphia, where he remained in hospital from October 31, 1863, until August 31, 1864, when he was sent with other invalids who were convalescent to the defense of Washington City, where after some service he was sent to Lincoln Hospital, and from there to Little York Hospital. When he recovered he started for his regiment, which was in the Southwest, supposed to be either at Nashville, Tenn., or somewhere in the State of Tennessee.

Arriving at Cincinnati he was detailed as orderly at Gen. Willich's headquarters, and remained two months, and was then forwarded to his regiment, then at Memphis, Tenn.; remained with his regiment until after the battle of Nashville, in which he was an active participant, and was complimented by his officers for his gallantry. He remained with his regiment until January, 1865, and received no pay for ten months, on account, as he was informed, because his descriptive roll had not been forwarded to the regiment from Gen. Willich's headquarters in Cincinnati. He left the regiment for Cincinnati to obtain his descriptive roll. When he reached Cincinnati he found that Gen. Willich was not in command, and, being without money to return to his regiment, he enlisted in the Sixth United States Infantry, under the name of Francis Cammeron, and remained with that regiment until the 11th day of January, 1868, when he received an honorable discharge, having served in the Army almost five years.

It is evident that Mr. Kelly did not desert on account of leaving the service, but being a mere boy, without experience, he did not comprehend the grave character of his action in leaving his regiment at Nashville and going to Cincinnati for his descriptive roll, but, like all soldiers, he desired to be paid and, boy like, he concluded to go for his descriptive roll where he believed it was detained, expecting to return; but disappointed in not finding Gen. Willich, being without money to return, he enlisted and served three years as a gallant man and brave soldier.

In 1878 the President granted the soldier an unconditional pardon for his desertion in 1865, but the fact of his reënlistment in the Regular Army afterwards was not submitted to the President.

Your committee recommend that the bill be amended by adding to the bill the words, "Provided that no pay, bounty, or emoluments of any kind shall become due or payable by virtue of the passage of this act," and as so amended that the bill do pass.

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APPOINTMENT OF FOURTH-CLASS POSTMASTERS.

MAY 13, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ANDREW, from the Committee on Reform in the Civil Service, submitted the following

REPORT:

[To accompany H. R. 581.]

The Select Committee on Reform in the Civil Service, to whom was referred the bill (H. R. 581) to regulate the appointment of fourth-class postmasters, submit the following report:

The essential purpose of the bill herewith reported is to exclude political influence in the appointment and removal of the large number of fourth-class postmasters throughout the country. The bill has been framed as the result of consultation with active advocates of the extension of the nonpartisan system of appointments and has the cordial indorsement of several Civil Service Reform Associations. The number of fourth-class post-offices on June 30, 1891, according to the report of the First Assistant Postmaster-General, was 61,387, and the number is increasing at the rate of nearly 2,000 a year. It is of supreme importance that this large number of public officers hold their places for merit and that their weight be not thrown into the scale of political contests as the paid workers of a single political party.

How large a factor they are in the public service, and how enormous the number of removals for political reasons in the years 1886, 1889, and 1890, when a change of administration had about taken place, may be judged from the table given below, showing the number of post-offices of all classes, the removals, the resignations, and expiration of commissions, and deaths. The table includes the Presidential post-offices, as well as the fourth-class post-offices, but as the Presidential offices numbered only 2,942 on June 30, 1891, and a less number before that date, the figures are fairly representative of the proportion of changes in the fourth-class post-offices alone:

Years.	Remov- als.	Resigna- tions and commis- sions ex- pired.	Deaths.	Offices in opera- tion.
1881.....	958	6,217	421	44,512
1882.....	1,021	7,346	461	46,231
1883.....	705	7,734	468	47,863
1884.....	513	7,265	477	50,017
1885.....	810	6,204	412	51,252
1886.....	9,566	9,112	587	53,614
1887.....	2,584	6,863	589	55,157
1888.....	1,244	6,521	659	57,376
1889.....	7,853	8,553	553	58,999
1890.....	6,569	8,919	673	62,401
1891.....	1,429	7,570	658	64,329

The increase of the removals from 810, for the fiscal year 1885, to 9,566, in 1886, with the noticeable increase in resignations from 6,204 to 9,112, means a change of more than 33 per cent of the postmasters of the country in a single year, where the changes were less than 14 per cent in the year preceding. A like change in 1889 shows removals and resignations amounting to 16,406, or nearly 30 per cent in a single year against less than 14 per cent the year before, when there was less motive for political removals. Such changes can not fail to do infinite injury to the postal service and injury to the business community which depends so much upon the service for prompt and safe means of communication.

The post-offices of the country come closer to the people than any other public offices under the Federal Government, and they ought to render the best possible service to every citizen contributing to the postal revenue by the use of the mails without special favors or discrimination. No possible argument can be made for treating the post-offices as political offices except the bold assertion that the machinery of the Government should be diverted from legitimate public objects to the service of a faction or a party. Reasons might be suggested why the legal officers of the Government, who have to apply and interpret its laws, or the customs officials, who have to pass upon questions of tariff classification, should be treated as political officers. An enlightened public policy, however, has already removed merely clerical places from the domain of party politics, and there is not a single argument which applies to them which does not apply with equal or greater force to the post-offices. There can be no greater outrage upon the rights of the individual or of a community than political discrimination against the right of all to perfect secrecy, the utmost speed and efficiency, and absolute impartiality in the use of the mails.

The bill herewith reported provides for the selection of fourth-class postmasters, when vacancies occur, in an open and public manner by post-office inspectors designated for the duty in the various postal districts. The nature of the work demanded of a fourth-class postmaster, and the local conditions of acquaintance with the people and convenience of the post-office building, preclude a purely educational test of the merits of different applicants. The post office inspector for the district where an appointment is to be made is required to give due weight to the location of the proposed office and the local standing of the applicant as well as to his educational qualifications. The Postmaster-General is required to select one of the several candidates designated by the inspector as fitted for the office, and to assign a reason if he does not designate the one graded highest by the inspector. The various papers in each case are required to be open to public inspection, except the confidential reports of the inspectors, which might in some cases do injury to the applicants. The reasons given by the Postmaster-General for rejecting applicants graded by the inspector higher than those whom he appoints are specifically required to be open to public inspection.

Your committee has made the provisions for excluding political influence uniformly applicable to all fourth-class post-offices. An amendment has, however, been adopted to the bill as introduced, designed to make it less expensive to the Government and more practicable in character. The actual presence of an inspector to make inquiries at offices where vacancies exist is limited to cases where the annual salary paid is in excess of \$100 and where there is a contest between two or more applicants. This change reduces the labor thrown

upon the Post-Office Department by more than one-half. The following table, furnished by the Postmaster-General for the use of your committee, gives a careful estimate of the number of fourth class post-offices on June 30, 1891, classified according to the salary paid:

Rate of compensation, not exceeding—	Number of offices.	Rate of compensation, not exceeding—	Number of offices.
\$100.....	34,743	\$700.....	844
200.....	11,546	800.....	681
300.....	6,179	900.....	518
400.....	2,966	1,000.....	930
500.....	1,719		
600.....	1,261	Total.....	61,387

The fourth-class post-offices at which the annual compensation is not in excess of \$100 number 56.6 per cent of the whole, leaving but 43.4 per cent where the occurrence of vacancies will call for the personal visit of an inspector. Comparing this table with the earlier one in this report, it appears that the number of appointments on the expiration of commissions, on resignations and deaths, in the fiscal year 1891, was 8,228. The number of removals is hardly worth consideration if the political motive for removals is eliminated, so that the actual vacancies from proper causes with which the Department would have to deal in all post-offices of all classes would be a little over eight thousand per year. The number at which the visits of inspectors would be required to settle contests under this bill would be about three thousand. Many of these contests would take little time, and could be adjusted on the same tours of duty on which inspectors attended to other subjects.

The cost of the proposed system, therefore, would not be great after the principle was established that the tenure of the best postmasters was permanent and that they were not to be removed for political reasons. The average number of changes from causes other than political would be less than 15 per cent of the entire number of fourth-class postmasters and the services of a small number of additional inspectors would be sufficient to make the proper inquiries and reports for the average of about 75 cases per year for each. There is no reason to believe that the entire work of a postal district under the proposed bill could not be done in addition to the many other duties which are imposed upon the inspectors, with only a slight increase of the present force.

The Postmaster-General, in his last annual report, recommended the division of the country into postal districts and the appointment of supervisors, "Not to inspect the routes and post-offices merely to correct irregularities that had happened, but to exchange suggestions with all the employés of the service and so prevent irregularities." If this wise recommendation were adopted there is no doubt that the supervisors so appointed could perform the duties required by the bill herewith reported, and that those duties would be quite in keeping with their work of supervision. Even if as many as thirty new inspectors were required at a cost to the Government of \$60,000 per year, for carrying out the provisions of this bill alone, they would unquestionably save to the Government more than the amount of their salaries and expenses in the increased efficiency they would bring to the postal service, and they would add many times their salaries and expenses to the postal revenue through the conveniencies and improvements suggested by them and the men they recommended, which would extend the scope of the service and invite its larger use.

While the more complicated machinery of the proposed bill is not extended to fourth-class postmasters drawing salaries under \$100 per year, your committee believe that these smaller offices must under the provisions of the bill soon cease to be counters in the game of politics. No new legislation is needed to give fourth-class postmasters a permanent tenure of office, without any limitation of term. The principle which has grown into our political practice of changing them every four years is one of the consequences of the four years' term act as applied to presidential post-offices. The enactment of the bill herewith reported, and of the bill introduced by Mr. Hoar of Massachusetts to abolish the four years' term act with regard to presidential postmasters, would so firmly establish the principle of a permanent tenure for all postmasters that removals of those at the smaller offices for political reasons, in violation of law, would attract public attention, demand the prosecution or impeachment of the guilty officials, and would soon cease to be made. As the greater includes the less, the exclusion of political influence from the larger offices would, in the opinion of your committee, soon have the effect of excluding such influence from the smaller offices also.

That the greater efficiency and economy of the postal service would inevitably follow a change in the system of appointing fourth-class postmasters is self-evident, for at least four reasons:

(1) The postmasters would be directly responsible to the Postmaster-General and his subordinates, and would no longer depend upon the influence or support of members of Congress.

(2) Responsibility to the Postmaster-General would carry with it the single test of fitness and efficiency for the retention of office. The fact that fitness was the supreme test would spur every postmaster to do his best work, to win the approval of his superiors and the endorsement of the public whom he served, and whose views would be a guide to the Postmaster-General and his subordinates in determining the measure of the fitness of a postmaster.

(3) The fact that removals would only be made for cause would result in longer service and prevent the evils of wholesale changes, such as have demoralized the service, wasted the public money, and embarrassed the people in recent years. Changes at the rate of less than fifteen per cent a year would make the weak spots in the chain of a perfect service few and far apart, instead of breaking down the entire service through the blunders and delays of an official force of which one-quarter or one-third were new men.

(4) The fact that postmasters were selected according to an orderly system and changed only for cause at the rate of less than fifteen per cent a year would relieve the congested state of business in the Post-Office Department at Washington and enable the Postmaster-General, his assistants, and his heads of divisions to devote time and attention to the broader problems of improving and extending the service.

These arguments speak for themselves and are sufficiently conclusive without being elaborated. The benefits of a service responsible through all its branches to the head and relying wholly upon merit for its rewards is obvious to every man who has had to do with business enterprises. The spirit of emulation is at best sluggish in the Government service as compared with the service of private employers, because the Government in the enterprises in which it is engaged has substantially a monopoly, without the healthy stimulus of competition. The injury done the railway mail service by the vast number of changes made during the last administration and immediately after the inauguration of

the present administration caused complaints from the business men of nearly every commercial city. That service has now been made subject to the civil-service rules, and it is to be hoped will never again become the foot-ball of political chance. The demoralization of the railway mail service would have been less obvious and complete if it had not gone hand in hand with a like demoralization among the postmasters. Your committee, in the interest of the business community and the millions of people in the United States who have occasion to use the mails, desire to prevent the repetition of such annoyances and injuries.

The relief to the Postmaster-General and his assistants would be not the least striking of the benefits derived from the enactment of the proposed bill. The postal service is capable of infinite improvement and requires the constant service of men of the highest ability and most thorough training. It is more important to the people in the relations of their daily life than any other Department of the Government. For years the service has been neglected, by the very necessities of the case, while Postmaster-General after Postmaster-General and First Assistant after First Assistant have flitted across the stage of the Department, leaving no other impress than the number of removals and appointments they have been able to make at the behest of members of Congress and politicians. The removal of the post-offices from politics means the emancipation of the Postmaster-General and his assistants from this wearisome and humiliating slavery and their ability to devote time and thought to the great improvements which shall keep the postal service abreast of the railroad and the telegraph in meeting the demands of modern progress.

If the telegraph is ever to be brought under the control of the Federal Government it can only be when the head of the postal service has time and opportunity to give attention to the actual details of his work instead of discussing the political advantages or disadvantages of fourth-class post-office appointments. Permanency of tenure under an intelligent Postmaster-General would prove an infinite stimulus to the postmasters themselves to study improvements and adopt them where it was in their power or recommend them to their superiors where they were of general utility.

Another great benefit of the proposed legislation is the release of members of Congress from the position of office brokers. Every member who has a rural constituency has felt the annoyance and the strain of neglecting his proper legislative duties to decide upon the merits of rival claimants for some petty office. These post-office appointments, sometimes considered a source of political strength, are coming to be recognized in many localities as a source of weakness and injury to the member who has to deal with them. Whether they are a source of strength or not, they are not a part of the legislative duties of a member of Congress, and in dealing with them he violates the spirit of the Federal Constitution, which in its separation of powers is intended to carry out the principle so happily defined by the constitution of Massachusetts, that—

The legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

The interference of members of Congress in the appointment of fourth-class postmasters is specifically forbidden by the proposed bill, and your

committee can not doubt that this provision will prove a relief to them and enable them the better to perform the duties of legislation.

The proposed bill is recommended to the House of Representatives for its favorable consideration because it seeks the improvement of the public service by establishing the test of merit as the only test for retention of office; because it at once relieves the Postmaster-General from labors which have prevented his studying the improvement of the service, and relieves the member of Congress from thankless tasks which have prevented his giving his best service as a legislator to the people who have sent him here to legislate; because it means for the people of the United States that their public servants shall render them their best service, and shall render it as the servants of all the people, and not as the paid mercenaries of a faction.



OFFICIAL MAP OF THE UNITED STATES FOR 1892.

MAY 13, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. RICHARDSON, from the Committee on Printing, submitted the following

REPORT:

[To accompany H. Res. 126.]

The Committee on Printing have considered House Resolution 112, introduced by Mr. Enochs, "authorizing and requiring the Public Printer to cause to be printed for distribution to the public schools and schoolrooms the official map of the United States for 1892."

The map referred to is not prepared nor printed at the Government Printing Office, but is prepared under the direction of the General Land Office by a contract made and entered into by the authority and direction of the Secretary of the Interior. The cost of the map is about \$1 each.

The committee are unable to learn the exact number of public schools in the several States and Territories of the Union, but the census shows that there are about 360,000 public-school teachers in the United States, and presumably there must be about the same number of public schools in operation.

The number of maps to be supplied for the uses contemplated by the resolution would be about equal to the number of teachers employed, certainly not less than 300,000.

The publication of this number of maps would require an appropriation, as nearly as can be estimated from the present contract price, which includes mounting on muslin, of about \$300,000.

The committee think it unwise and impolitic to make any such expenditure, or attempt to supply these maps for the purposes mentioned in the resolution. They recommend, however, the adoption of a substitute for said resolution in the form of a joint resolution which is herewith submitted providing for the publication of 2,000 of said maps for the Senate and 4,000 for the House of Representatives, and providing that the same be done under the direction of the Secretary of the Interior.

Your committee recommend that the original resolution do lie on the table.

DEPARTMENT OF THE INTERIOR,
Washington, April 5, 1892.

SIR: Referring to your reference of House Resolution No. 112, with request for an estimate of cost per thousand of printing maps of the United States as proposed in

said resolution, I have the honor to transmit herewith a copy of a letter from the Commissioner of the General Land Office, to whom the matter was referred.

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. JAMES D. RICHARDSON,
Chairman Committee on Printing, House of Representatives.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., April 1, 1892.

SIR: I have received by Department reference for report and return a copy of House Resolution 112, introduced by Mr. Enochs, "Authorizing and requiring the Public Printer to cause to be printed, for distribution to the public schools and schoolrooms, the official map of the United States for 1892.

It is presumed that the official map referred to is that prepared under the direction of this office to illustrate the public-land system.

This map is published under a contract made and entered into by direction of the Hon. Secretary of the Interior, and is not a production from the Public Printing Office, or under its supervision or control, as its compilation devolves upon this office, and requires its constant supervision and direction to insure accuracy.

An edition of the map is printed annually from an appropriation specially provided for the purpose, and there are many changes in each annual edition, required by the extension of the public surveys and railroad lines, the addition of names of new towns, and other data which are necessary to keep the maps up to a proper standard of accuracy.

It appears from the accessible data of the Census Office that the number of public schools in the various States and Territories is not given, but the number of public-school teachers in the United States aggregates about 360,000, and presumably nearly an equal number of public schools are in operation.

From the report of the Commissioner of Education it is ascertained that in 1890 there were 224,839 public schools, but, as in all large cities, one school may contain from ten to twenty or more classes or grades, each occupying a separate room, the number of maps to be supplied for the use contemplated by the resolution would approximate nearly to the number of teachers employed, or not less than 300,000, and the publication of this number of maps would require an expenditure, as nearly as can be estimated from the present contract price, which includes mounting on muslin, about \$295,000; but, with the magnitude of the number required, the contract price could no doubt be greatly reduced.

The resolution meets with my approval.

Very respectfully,

T. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

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LEGAL REPRESENTATIVES OF JAMES W. SCHAUMBURG.

MAY 14, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 261.]

The Committee on War Claims, to whom was referred the bill (S. 261) for the relief of the legal representatives and devisees of James W. Schaumburg, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Claims of the present Congress, which report is hereto annexed as a part of this report.

Your committee adopt the said report as their own and recommend the passage of the bill.

[Senate Report No. 205, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 261) for the relief of the legal representatives and devisees of James W. Schaumburg, having had the same under consideration, submit the following report:

A similar bill was before this committee at the second session of the Forty-ninth Congress, and also at the first session of the Fifty-first Congress, at which time the report of your committee in the Forty-ninth Congress was readopted (No. 95, Fifty-first Congress, first session), which report is again readopted as the report of the committee.

Senate Report No. 95, Fifty-first Congress, first session.

Mr. MITCHELL, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 986.]

The Committee on Claims, to whom was referred the bill (S. 986) for the relief of James W. Schaumburg, having had the same under consideration, beg respectfully to submit the following report:

A similar bill was before this committee at the second session of the Forty-ninth Congress, when the following report (No. 1626) was agreed to. This report was also adopted by this committee at the first session of the Fiftieth Congress. It is as follows:

Your committee find, upon a full examination of this claim, that the rights of the claimant depend upon the single question whether he ceased to be a first lieutenant in the Army in consequence of an order issued by the Adjutant-General, June 30, 1836. If that order was legal and valid the claim is without merit, and if it was invalid there can be no doubt the claimant is justly and legally entitled to the amount named in the bill.

The circumstances under which the order was issued are fully set forth in a letter written by ex-President Jackson, June 12, 1843. In this letter General Jackson sets out in detail the methods resorted to by certain officers unfriendly to the claimant, in an attempt to find or create a technical ground for unjustly depriving the claimant of his position as lieutenant in the Army. The facts narrated in this letter, and substantiated by the records of the War Department, tend to convince your committee, as they then convinced General Jackson, that issuing the above order of the Adjutant-General was a wrongful usurpation; that the order was without authority and void, and that the claimant continued a lieutenant, entitled to the pay and emoluments of the position.

President Tyler was of the same opinion, and his official letter of date January 24, 1845, said:

"I have only to say that on a thorough and minute examination of your case, and a most patient and elaborate examination of all the facts and circumstances, I came to the conclusion that you had never been properly out of the Army."

And he says he based his official action on that conclusion.

The same conclusion was reached by other distinguished men connected with the administration of the Government, many of whom expressed their indignation at the wrongful attempt to deprive Lieutenant Schaumburg of his position in terms not much less emphatic than those employed by General Jackson.

Secretary Folger, upon an examination of the facts of the case, and upon learning that the accounting officers considered the case not open for their consideration because it had been acted upon by the Auditor and Comptroller in former years, was so strongly impressed with the absurdity of the rulings made on this subject in 1845 that of his own motion he addressed a letter to the Senate Committee on Appropriations, recommending—

"That authority be given to the accounting officers of the Treasury to audit and allow the claim and that an appropriation of \$11,000, or so much thereof as may be necessary, be provided for its payment."

If the validity of the order of June 30, 1836, purporting to relieve Lieutenant Schaumburg from the military service could properly be considered an undetermined

question, it might be the duty of the committee to set forth in detail the personal considerations and influences that originated the order, but the illegality and invalidity of the order and of the attempt to deprive Lieutenant Schaumburg of his position in the Army has been directly and conclusively settled by a judgment of the district court of the United States for the eastern district of Pennsylvania, and the judgment was affirmed on appeal to the Supreme Court of the United States.

In an action between the United States and the claimant, commenced in the district court in September, 1874, and determined in November, 1875, the legality of the order and the question whether the claimant, Schaumburg, was a lieutenant during the period in question, was directly in issue, and the court, having before it the orders of the War Department, made during the attempt of Lieutenant Schaumburg's enemies to deprive him of his position in the Army, and the entire records relative to the subject, instructed the jury, as a matter of law, that Schaumburg, "from July 1, 1836, until March 24, 1845, was in the military service of the United States as a first lieutenant of dragoons or cavalry, and that he was entitled as such to credit for the pay and emoluments that accrued during that period," and a verdict and judgment were rendered in accordance with the instruction. This judgment was a judicial determination of the invalidity of the order, and that Lieutenant Schaumburg continued in the service. From this judgment an appeal was taken to the United States Supreme Court, and the judgment was affirmed. (*Schaumburg v. United States*, 13 Otto, 667.)

The court, under the issues presented, having full jurisdiction to determine Schaumburg's right to the office and to its emoluments, the nature of the issues required present payment or allowance in that cause of only \$306.20 of the \$11,471.51 then due to Schaumburg, thus reducing the indebtedness to \$11,165.31; and it not being the province of the district court to render judgments directing present payment by the Government, this balance still remains unpaid. But as it was within the jurisdiction of the court to ascertain and determine whether Mr. Schaumburg was in the Army, and entitled to pay, in order to determine whether the set-off should be made, the judgment is conclusive on whatever question was necessarily involved in that suit. It is, in the opinion of your committee, conclusive that Schaumburg was a lieutenant in the Army, notwithstanding the order of June 30, 1836, and of all that is material in the present claim, it being an elementary principle that the judgment of a court having jurisdiction is conclusive of the point determined in any future inquiry between the same parties relative to the same subject-matter.

Although this judgment would seem to render a further consideration of the validity of the order unnecessary for any purpose of determining the legal rights of the claimant, consideration for the hardships and delays to which the claimant has been subject for want of a full understanding of the questions involved may justify a brief statement of the points originally involved.

Long prior to 1836 it had become a practice, having the approval of the War Department, that when some emergency rendered it important to an officer that he should absent himself from a distant post of duty sooner than it was possible to obtain an order granting leave of absence, the officer, at his own risk, made a formal tender of his resignation, conditioning the resignation to take effect at a specified future time. The resignation was inclosed with a letter explaining the emergency, asking the leave of absence, and requesting that the resignation be not accepted.

On the 6th of June, 1836, Schaumburg, then being a second lieutenant and stationed at Fort Des Moines, was informed that his father was sick and could not survive many weeks, and he sent such a letter with his resignation as second lieutenant, conditioned to take effect October 31 following.

June 28, 1836, the War Department issued an order forbidding the further continuance of that practice, and requiring all officers then absent under that practice to resume their duties within three months or to vacate their commissions. It also contained the following:

"If the resignation of any officer be accepted, it shall take effect within thirty days from the date of the order of acceptance."

By misconstruction of this language and misconception of legal rights the Adjutant-General issued an order on the 30th of June, 1836, purporting to accept the resignation of Second Lieutenant Schaumburg, to take effect July 31, 1836, disregarding the condition that had been made part of the proposed resignation; and in attempting to give force to the action then taken on the qualified resignation as second lieutenant, the Adjutant-General ignored the fact that after this attempt, namely, on July 1, 1836, Schaumburg was promoted and received a re-appointment to the position of first lieutenant, being duly commissioned on July 1, 1836. Schaumburg subsequently accepted the office of first lieutenant.

The incidents referred to in this connection occurred in the following order:

June 9, 1836, Second Lieutenant Schaumburg tendered his resignation as second lieutenant, conditioned to take effect October 31, 1836; June 28, 1836, a general order was issued changing the practice; June 30, 1836, an order was issued purporting to

accept the resignation of Schaumburg, to take effect July 31, 1836; July 1, 1836, Schaumburg was commissioned first lieutenant; July 12, 1836, he heard for the first time of the attempt to accept his resignation contrary to its terms, and on that date he wrote from Wheeling, Va., to the Secretary of War, withdrawing his resignation and asking the benefits of the general order. Afterwards he heard of and accepted his appointment as first lieutenant.

Your committee attach hereto the letter of ex-President Jackson, herein referred to, and in which the history of this case is fully, clearly, and graphically set out. Also, the letter of Secretary of the Treasury Folger, recommending the payment of this claim. That all the questions, however, involved in this claim may be passed upon judicially, in a direct manner, your committee report back as a substitute for Senate bill 1006, the accompanying bill, and recommend its passage.

THE HERMITAGE, June 12, 1843.

Lieut. JAMES W. SCHAUMBURG, *Philadelphia, Pa.:*

MY DEAR SIR: I received your letter with a statement and accompanying documents relating to your having been irregularly put out of the Army.

I first note that you were stationed at Fort Des Moines, on the Upper Mississippi, and that you had learned from your family at New Orleans your father was sick and could not survive many weeks, and you applied to your commanding officer, Lieut. Col. S. W. Kearney, to then allow you to go to New Orleans to visit your good father, fearing he would not live until a leave of absence could be granted and come from Washington. This reasonable request to leave was refused by Lieutenant-Colonel Kearney, which was very unfeeling and discreditable to him, as such an indulgence, when no great public necessity forbade you leaving your post, should have been granted. There appears to have been no such obstacle; and therefore the refusal could only have been owing to personal ill-will or a degree of insensibility unbecoming any officer.

The refusal of your commanding officer compelled you to write to Washington for a leave of absence to enable you to go and see your dying parent. Some weeks elapsed before your application was returned. The commanding general indorsed on your application that the leave for three months to go to New Orleans would be granted, providing the commanding officer should deem it proper to allow it. This was no better than a refusal, as it left it to be granted or not to your commanding officer who had improperly refused you. He did not think it proper to grant it. It appears that Lieutenant-Colonel Kearney had placed you in arrest, though no charges were ever preferred against you, and he based his refusal to allow you a furlough because he expected a court-martial would some time or other convene for your trial and you could not leave. You remained in arrest over eight months; no court was ever ordered for your trial, and no charges were ever written or presented against you, and Lieutenant-Colonel Kearney himself was ordered away from the post and you still in arrest up to the 6th of June, 1836.

Colonel Kearney having left you at the post under command of Capt. E. V. Sumner, Colonel Kearney instructed him (Captain Sumner) to hold you in arrest. After Lieutenant-Colonel Kearney, you applied to Captain Sumner to grant you the leave sent from Washington, which left it to the commanding officer to grant or not. Captain Sumner answered that he could not let you go for the reason that Colonel Kearney had instructed him on leaving not to grant it. This was not creditable to Colonel Kearney, and Captain Sumner, being commanding officer of the post, was not under Colonel Kearney's orders after he had left to command elsewhere. The responsibility for your presence or absence was not upon Colonel Kearney, but upon Captain Sumner, and had he granted you the three months' leave sent from Washington, he was not responsible for your absence. Captain Sumner refused to let you go for the reason stated, and finding yourself thus blocked, and as it strikes my mind forcibly, the purpose aimed to be accomplished was obtained. You wrote a letter of resignation on the 6th of June, 1836, to the Secretary of War, requesting the acceptance of your resignation, to take effect the 31st of October following.

You were a second lieutenant of the regiment of dragoons. Accompanying this letter was your letter to General Macomb, general commander-in-chief, expressing your sincere regret in being thus obliged, to enable you to go to New Orleans, to write your resignation; the more so as you were in arrest, with charges alleged against you, and you expressed an earnest wish that your resignation would not be accepted, at least not until you had an opportunity to defend yourself before a court-martial.

This was as honorable as your request was reasonable, and should have been so appreciated by the commanding general. Captain Sumner very properly recommended, in his letter to the Adjutant-General covering your tender of resignation and your letter requesting an investigation, that your earnest request should be granted.

Your reasonable and honorable request which Captain Sumner, with good feeling, thought should be granted to you, was disregarded, and the time conditioned in your letter for your resignation to take effect, to wit, the 31st of October, was shortened, and Lieutenant-Colonel Kearney wrote to the Adjutant-General expressing his most sincere hope that you would not be permitted to withdraw your resignation, which was an impertinent officiousness, as it was from personal feeling against you, and none of his business. The Special Order No. 44, dated June 30, 1836, says: The following resignations have been accepted by the President, to take effect at the date set opposite their names, respectively, and your name is given in the list as resigning as first lieutenant, and the date for it to take effect is the 31st of July, 1836.

The letter you wrote was of your resignation of the office of second lieutenant and not that of the higher office of first lieutenant, which, as you did not resign, the Executive or "proper authorities" could not have accepted as stated in the general order. You were some time before entitled to be a first lieutenant, but at the period of writing your resignation you were a second lieutenant, not having been promoted or notified of your promotion. If you had been you would not have written your resignation and signed yourself as a second lieutenant. You conditioned your termination of service to be the 31st of October. One thing or the other, if an officer has the right to specify the time to which his services end, and if the authorities are unwilling to allow the time it is for them so to acquaint him and say what time would be allowed. If he likes the terms he would agree, and if he did not he would remain; but the authorities have no right to alter the time by any arbitrary order. I would not have permitted such a thing to be done.

An officer's commission in the military service of his country is a vested right which he holds under the laws for the government of the Army and Navy, and can not be infringed upon. I consider the pretended acceptance of your resignation of your office as a second lieutenant as an official misdemeanor, which, had you brought the facts to my knowledge when I was President, I would have dismissed the officers who so disgracefully connived at your separation from the Army, as the facts in your case exhibit in the documents before me.

I notice in the Army Register, in the list of officers below you in the regiment, the name of A. S. Macomb as a brevet second lieutenant, that the acceptance as illegal of your resignation advanced that officer, and he is a son of the commanding general by whose orders the special order promulgating your resignation was issued by the Adjutant-General, who should not have obeyed or countenanced the command, as he must have known it was a false proceeding. It appears you went to New Orleans as expeditiously as you could, and made haste to go to Washington to prevent your resignation from being acted upon. You wrote from St. Louis, New Orleans, and Wheeling to the Adjutant-General and to General Macomb, asking not to act upon your resignation; and at Wheeling you wrote to claim the benefit of the President's direction, published in General Order 43, dated June 28, 1836.

This order I remember to have directed the Adjutant-General to issue. * * *

As your resignation was dated on the 6th of June, twenty two days before the date of the order, viz, the 28th of June, you were entitled to the privilege expressed in the second paragraph, which referred to all such as had resigned at some date anterior to the date of the order. Your resignation was received, as appears by the Adjutant-General's indorsement, 23d June, which was five days before the date of the order. If this is denied, and the only proof that it was accepted after is the Order No. 44, 30th June, in which your name is mentioned as resigning your office of second lieutenant, and as accepted to take effect the 31st of July, two days after the Order No. 43, viz, the 30th of June, then it convicts the military officials of the War Department of a premeditated purpose to exclude you from the privilege of the paragraph which was to cover all resignations offered or accepted before the date of the order, and it is clear that the purpose was to exclude you by saying your resignation was comprehended under the prospective paragraph of the Order 43, which could not possibly be so, as the paragraph was notice to all who resigned after the date of the order that their resignation, if accepted, would be accepted to take effect thirty days after the date of the acceptance.

Your tender of resignation was twenty-two days before the date of the Order 43, and the excluding you from it, under the prospective paragraph, was dishonest, and such an act should be severely punished. The integrity of the records of the Adjutant-General's Office, by that act against you, carries with it a blemish which should be wiped out. It appears that you went to Washington and reported to the Adjutant-General, claiming the benefit of the President's directions contained in the General Order No. 43, and you were answered that your resignation had been accepted, to take effect the 31st of July, 1836.

According to the second paragraph of General Order No. 43, you reported in person on the 22d of July. The order allowed to all officers whose resignations *had been* effected to take effect at some prospective date who would "elect" to continue in the

service three months to join their corps or regiment. You went to the General-in-Chief to report yourself and ask that the matter might be corrected. He answered that nothing could be done. Your resignation was accepted to take effect as stated in the Special Order No. 44, to wit, the 31st of July, and it could not be canceled.

You protested in writing against this order, and claiming the benefit of the President's directions, as you had come to report for orders to return to duty, and that the Order No. 44 was false in saying the President had accepted the resignation of your office of first lieutenant, which you had not resigned. You stated that, as neither the General-in-Chief nor the Adjutant-General would do anything in the matter, you called on the Secretary of War, and stating the facts to him he said that you should be righted, but asked you to let the matter rest, as it would be embarrassing to revoke or cancel the Order 44, and that on the occurrence of a vacancy of first lieutenant you would be ordered back to your regiment. Upon this assurance of the Secretary of War, General Cass, you went to your home to await a vacancy for first lieutenant and orders thereon.

General Cass left the War Department before a vacancy occurred; at all events you were not afterwards ordered to return to duty. You some time after wrote to Mr. Poinsett, Secretary of War, who succeeded General Cass. He answered you that he could not see any difference in your resignation or the acceptance of it from any ordinary resignation, and, therefore, that he could not order your name to be replaced on the Army roll. Mr. Poinsett came to this conclusion by relying upon the Adjutant-General's report of the facts, which does not truly represent the facts of record. If Mr. Poinsett had examined with half an eye the correspondence and the orders, he could not have failed to discover the wrong done to you, and the violation of official integrity amounting to dishonesty. Your application failing here, you should have applied to the President.

Your next application was to Secretary Spencer, Secretary of War, now or lately under the present Chief Magistrate, as appears from your memorial. Mr. Spencer answered somewhat as Mr. Poinsett, that he considered your resignation as perfect and effectual as accepted to take effect the 31st of July, and then stultified the assertion by saying you were entitled to be paid as a first lieutenant up to the 31st of October, the period specified in your letter of resignation.

Now, if your resignation, as alleged to have been accepted to take effect the 31st of July, was, as he says, "perfect and effectual," you certainly were not an officer *after* that date; and not being an officer you could not receive pay, etc., up to the 31st of October—that is, for three months. If you were entitled to pay, etc., up to the latter date, then you were still in the service, for you could not be in as to pay and out as to commission. So Mr. Spencer's argument or reasoning was mere nonsense, neither agreeing with facts nor logic. Mr. Spencer, as you rightly suspected, acted upon the misrepresentations of the Adjutant-General and prejudicial counseling of General Scott, whose well-known exquisite sense of justice and right is regulated according to his personal inclinations and perverted conceptions.

I have gone through the memorials and various documents, and as I progressed my interest was excited, for the case presented in itself so much wrong—premeditated wrong by high officials—I felt that I should examine it thoroughly with Major Donelson, and I write out my understanding of the matter, notwithstanding I am in constant pain, and have to rest very often, but it is on the side of justice and right I am engaged. You have been very improperly treated, and had you come to me after General Cass left the War Office, I should have righted you, and punished Macomb, Jones, and Kearney for acting as they did towards you, and had the official records cleared of falsification.

I say you have never ceased to be in the Army. Your resignation amounted to nothing. You did not resign your office of first lieutenant. You were fully entitled to the benefit of my directions published in General Orders No. 43, as you applied for orders under it. You were fairly and justly so entitled, and your constant efforts to have your rights recognized is creditable to you. I hope you will persevere.

If I were President, I would put you back if it made you colonel of the regiment, and I hope President Tyler, to whom you should appeal, will order your re-instatement and promotion to the position your commission as first lieutenant under the laws entitle you to. You are at liberty to show this letter to the President.

I remain, very respectfully, your friend,

ANDREW JACKSON.

TREASURY DEPARTMENT, *July 11, 1882.*

SIR: I have the honor to inclose herewith copies of papers in the claim of James W. Schaumburg for pay and allowances as lieutenant of dragoons from July 1, 1836, to March 24, 1845, and to recommend that authority be given to the accounting

officers of the Treasury to audit and allow the same, and that an appropriation of \$11,000 or so much thereof as may be necessary, be provided for its payment.

Very respectfully,

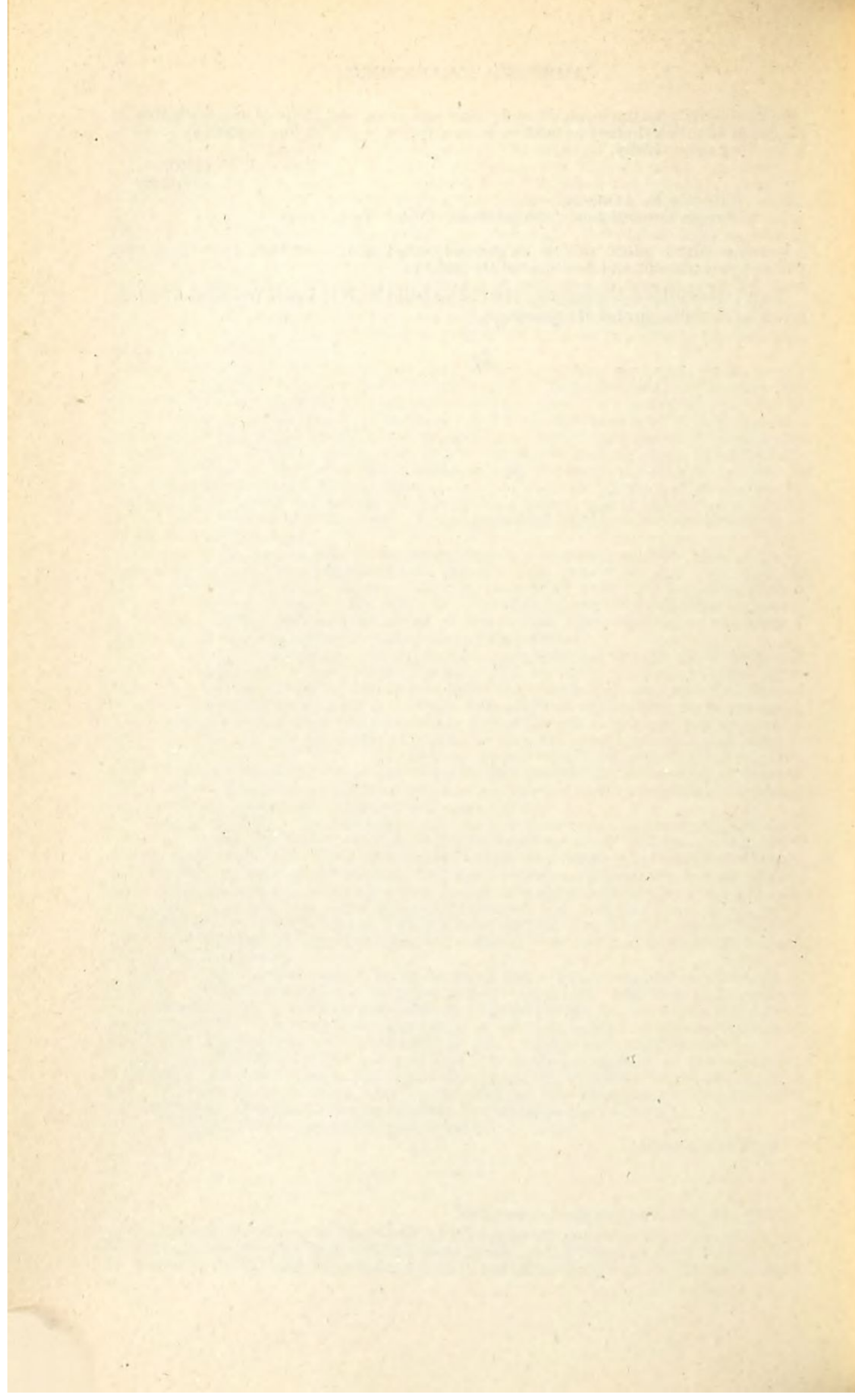
CHAS. J. FOLGER,
Secretary.

Hon. WILLIAM B. ALLISON,
Chairman Committee on Appropriations, United States Senate.

Your committee adopt this as its present report and report back the bill (S. 954) without amendment, and recommend its passage.

Your committee therefore report the bill (S. 261) back without amendment and recommend its passage.

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JAMES M. OLIVER.

MAY 14, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 3828.]

The Committee on War Claims, to whom was referred the bill (H. R. 3828) for the relief of James M. Oliver, submit the following report:

James M. Oliver was mustered into service as second lieutenant Company B, Second Arkansas Infantry Volunteers, January 17, 1864, to fill an original vacancy, and is reported on roll of that company for January and February, 1864. He is borne on subsequent rolls as a second lieutenant to May 22, 1865, date of his muster as first lieutenant, and was honorably discharged as of latter grade August 8, 1865.

The records of the War Department fail to show the date he was appointed or commissioned second lieutenant, and the only paper on file in the War Department relating thereto is Special Orders No. 28, dated Department Arkansas, February 25, 1864, authorizing Capt. W. A. Martin, assistant commissary of musters for Arkansas troops, to muster James M. Oliver, a citizen, as second lieutenant Company B, Second Arkansas Infantry. Company B of said regiment was mustered into service December 8, 1863, with 68 enlisted men, all of whom are reported as having been enrolled from September 10, 1863.

The proof filed in support of the bill shows that the claimant was appointed second lieutenant September 10, 1863, and was on duty and recognized as a second lieutenant, and your committee is of opinion that the claimant should be paid from September 10, 1863, to January 17, 1864, and recommend the passage of the bill.

ESTATE OF JOHN W. WHITFIELD.

MAY 17, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COX, of Tennessee, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 242.]

The Committee on Claims, having had under consideration the bill (S. 242) for the relief of the estate of John W. Whitfield, beg leave to report:

On March 10, 1857, John W. Whitfield became a surety on the official bond of William W. Dennison as an Indian agent in Nebraska Territory. Afterwards the said Whitfield was appointed register of the land office in the Delaware land district of Kansas, and also a special register and superintendent of the sales of the Delaware and other Indian trust lands in Kansas.

On March 28, 1861, the Secretary of the Interior ordered all moneys due said Whitfield as register to be withheld, subject to the settlement of the accounts of said Dennison as Indian agent. In April, 1861, the said Whitfield, through his attorney, requested the Secretary of the Interior to bring suit on the official bond of the said Dennison and have the matter adjusted, which was not done. In 1869 Whitfield died. In 1884 Mrs. Sarah B. Whitfield, his widow and administratrix, through her duly appointed agent, applied for a settlement of the account of said register, which was refused.

In an official communication to said agent of December 6, 1884, it was admitted and stated that for nine quarters said register was not paid any commission on the moneys received for public lands sold by him, nor was he allowed any of the fees for lands located by military bounty land warrants in his office during that time, and that for three quarters he had not been paid anything for salary due to him, and said agent was further informed in said communication as follows: "In the case of Whitfield you must look to Congress for relief." Said agent also made application for a further adjustment of the accounts of said Whitfield as special register and superintendent of the sales of certain Indian trust lands, under certain Indian treaties, as construed by the Supreme Court of the United States, on March 3, 1884, in the case of one of the four special agents appointed to sell those Indian trust lands, which request was refused, on the ground that it required an act of Congress authorizing or requiring it to be done. She then proposed to compromise with the Government the claim which the United States hold against the estate of her late husband by reason of an alleged defalcation of the said Dennison, which compromise the Solicitor of the Treasury refused to recommend.

In 1887, more than a quarter of a century after the said Dennison had ceased to be an Indian agent, said solicitor instituted a suit against Sarah B. Whitfield, as surviving wife, and her son John A. Whitfield, as sole heirs at law of the said John W. Whitfield, on the official bond of the said Dennison, in the circuit court of the United States for the western district of Texas, November sessions, 1887, No. 346, which suit is still pending, and which should not be tried until said defendants are authorized by Congress to make defense and claim as a set-off, in the trial of said suit, any and all sum or sums of money due to the said John W. Whitfield as register of said land office and as special register and superintendent of the sales of Indian trust lands.

The Fifty-first Congress authorized one-half of the trust moneys received for lands sold by said Whitfield and other special agents, together with the accrued interest thereon, to be paid over to one of the tribes for whom a portion of said trust lands were sold. The Delaware Indian treaty of May 6, 1854, and the treaty with the united tribe of Wea, etc., Indians of May 30, 1854, under which said trust lands were sold, expressly stipulate that the expenses of the sales of said trust lands shall be deducted from the proceeds of said sales, and that the net proceeds only shall be paid over by the trustee to said Indians; therefore, in order to protect the interests of the United States, the account of said Special Agent Whitfield should be finally settled before said trust moneys pass out of the hands of the trustee.

The sole heirs at law of the said John W. Whitfield do not ask to be released from their responsibility in consequence of the said John W. Whitfield being a surety on the official bond of the said Dennison as an Indian agent. They merely desire a final settlement of the question, and in the trial to be permitted and entitled to make defense and claim set-off in favor of the said John W. Whitfield, as provided for in the bill (S. 242) herewith reported.

The committee therefore recommend the passage of the bill (S. 242) and that H. R. 2124, same title, lie on the table.



P. H. BRIDGEWATER.

MAY 17, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 5543.]

The Committee on War Claims, to whom was referred the bill (H. R. 5543) for the relief of P. H. Bridgewater, submit the following report:

Your committee adopt the report of the committee of the Fifty-first Congress on this case, a copy of which is hereto appended, and recommend that the bill do pass.

[House Report No. 2303, Fifty-first Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 1624) for the relief of P. H. Bridgewater, submit the following report:

Your committee adopt the report hereto annexed, from the Committee on War Claims of the Fiftieth Congress, and report back the bill and recommend its passage.

[House Report No. 3264, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 3708) for the relief of P. H. Bridgewater, submit the following report:

The committee had same under consideration, and find that in January, 1863, the Sixth Kentucky Volunteer Cavalry, while in pursuit of John H. Morgan, of the Confederate army, took from claimant two horses of the value of \$150 each, and used and converted them to the use of the United States Government; that claimant filed his claim for the value of said horses, \$300, in the Quartermaster-General's Department March 25, 1872, and which was disallowed April 9, 1884, upon the ground that the Quartermaster-General was unable to certify as to the loyalty of the claimant or that the horses were actually received or taken for the use of and used by the U. S. Army. The claimant has filed before your committee the affidavits of Nathan A. Baley and William W. Page, reputable witnesses, proving the taking and use of claimant's horses by the U. S. Army, which were not before the Quartermaster-General, which, in the opinion of your committee, would have been sufficient, and would have caused favorable action on his part by the Quartermaster-General had the proof been before him as before your committee.

Upon the question of loyalty the claimant persists in his claim, swearing he was a loyal citizen and did not give aid or comfort to the enemies of the Government. His loyalty is shown by John H. Cofer and Oliver H. Hanwell, subscribing witnesses to the claim of claimant; and J. T. E. McLean, United States commissioner; James E. Russe, postmaster at Centralia, Ky.; George W. Nell, clerk of the county court of Adair County; T. R. Mitchell, postmaster at Camp Knox, Ky., all loyal to the Government and of unquestioned integrity. Hon. M. J. Durham, in whose district claim-

ant lived, regards him as loyal. A. H. Judd, postmaster, regards him as having been loyal. N. R. Christer and some others regarded claimant as a rebel sympathizer, but no one pretends to prove by word or deed that he ever uttered a single disloyal word or was guilty of a disloyal act towards the Government of the United States during the rebellion.

Your committee, being fully satisfied that the Government of the United States took and used the horses of the claimant of the value of \$300, for which he has been paid nothing, and that the claimant was a loyal citizen of the United States during the war, recommend the passage of the bill.

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T. T. PITZER.

MAY 17, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 2552.]

The Committee on War Claims, to whom was referred the bill (H. R. 2552) for the relief of T. J. Pitzer, submit the following report:

Your committee adopt the report of the committee of the Fifty-first Congress, a copy of which is hereto appended, and recommend that the bill do pass.

[House Report No. 2163, Fifty-first Congress, first session.]

The committee on War Claims, to whom was referred the bill (H. R. 3247) for the relief of T. J. Pitzer, report as follows:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Forty-ninth Congress, a copy of which is hereto appended and made a part of this report.

Your committee adopt the said report as their own and recommend that the bill referred to them do pass.

[House Report No. 1625, Forty-ninth Congress, first session.]

The claimant, Thomas J. Pitzer, of Knox County, Ky., brings this claim for \$400, the price of two good mules taken from him in 1864, at or near Barboursville, Ky. The proof is conclusive that claimant was a loyal citizen, and it is equally as well shown that the two mules were taken and used by the Army of the United States. The witnesses differ a little as to the value of the mules, one witness fixing the value at \$150 each and the other at \$200 each. The committee fix the value at the sum of \$200 each, making \$400 for the two, and this sum they recommend be paid claimant. The committee think there is nothing in the statement of the agent of the Quartermaster-General that claimant purchased these mules from some men residing in a State in insurrection, there being absolutely nothing in the record to show any collusion or bad faith in any part of the transaction.

The committee are of opinion that the claim should be allowed, and therefore recommend that the bill do pass.

LEGAL REPRESENTATIVES OF SAMUEL WOODS.

MAY 17, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8738.]

The Committee on War Claims, to whom was referred the bill (H. R. 8738) entitled "A bill for the relief of the legal representatives of Samuel Woods," report:

Samuel Woods served in the U. S. Army as a cadet at the West Point Military Academy for four years next preceding July 1, 1837, and as a commissioned officer in the U. S. Army from July 5, 1838, to July 15, 1870. During all the time he thus served as a commissioned officer the following provision of law was in force.

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

He was paid for his services in the said interval of time from July 5, 1838, to July 15, 1870, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of service of about four years in the U. S. Army at the Military Academy. For this reason it is alleged he was short-paid for his services as a commissioned officer rendered during said interval of time from July 5, 1838, to July 15, 1870, or in about four-fifths thereof, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price, thus put in controversy, of the one additional ration per diem for every five years of prior service computes to about the sum of \$2,000, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimants may go before a competent tribunal and prove the justness of their claim if they can.

The committee recommend that the bill do pass.

SAMUEL EVANS.

MAY 17, 1892.—Laid on the table and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

ADVERSE REPORT:

[To accompany H. R. 3378.]

The Committee on War Claims, to whom was referred the bill (H. R. 3378) for the relief of Samuel Evans, report as follows:

The committee have given the case a careful consideration and find the following to be its history:

On March 10, 1873, the claimant filed his petition with the Commissioners of Claims, alleging that he had a claim against the United States.

The Commissioners of Claims awarded Mr. Evans the sum of \$1,447, and disallowed the remainder of the claim.

The amount of the award was paid by the Treasury Department under authority of act of Congress approved June 14, 1880. (See Stat. L., Vol. 21, p. 560.)

The claimant accepted the sum so allowed and signed a receipt acknowledging it to be in full of the whole claim. No other claim was made at the time of settlement, and no notice of a claim to be presented at a future time was given.

The committee hold that the payment of the award made by the Commissioners of Claims, and a receipt given in full payment of the whole claim, was a bar to any further claim upon the Government. Unless the claimant is barred, under the circumstances stated, it would be difficult for the Government to determine when there would be an end to claims put forth against it.

The Supreme Court of the United States decided that a voluntary acceptance by a claimant of a sum smaller than one claimed, as a full satisfaction of the whole, and acknowledging this in a receipt for the amount paid, the demand having been disputed for a long time, and the smaller sum accepted without objection or protest, is a bar to further claim (12 Wallace, *United States v. Child & Co.*, p. 232.)

The committee report adversely to the bill, and recommend it do lie upon the table.

MARTHA W. HOLMES.

MAY 17, 1892.—Laid on the table and ordered to be printed.

Mr. DOLLIVER, from the Committee on War Claims, submitted the following

ADVERSE REPORT:

[To accompany H. R. 3366.]

The Committee on War Claims, to whom was referred the bill (H. R. 3366) for the relief of Martha W. Holmes, submit the following report:

The claimant represents that she is a colored woman. Her name before her marriage was Martha W. Mason. She is a daughter of E. Worthington, deceased, late a citizen of the State of Arkansas. William M. Vogleson, captain and commissary of subsistence, U. S. Army, on the 29th of March, 1863, received from said E. Worthington a large number of cattle, the net weight of which was 40,000 pounds, and a receipt was given by said Vogleson to said Worthington for the cattle so delivered. On the 16th day of September, 1863, said E. Worthington transferred and assigned the receipt given him by said Vogleson to your petitioner and to her brother, James W. Mason, the latter being a son of said Worthington. Petitioner's said brother has since died, leaving no children or heirs at law.

The petitioner was a slave, and the property alleged to have been taken belonged to the master, who was the putative father of the slave. But there is no claim of any manumission, in fact or intended, and the slave became free or entitled to take and hold property by the act of the Federal Government, and as the result of the war, and not by any act of the master. Under such circumstances, the committee think it quite clear that, as the petitioner was not the owner of the property alleged to have been taken, no cause of action accrued to her to make claim or recover its value from the Government.

There is another complete answer to this claimant: The statute makes all assignments absolutely void unless the same shall be freely made and executed in the presence of at least two attesting witnesses after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof (10 U. S. Stat., p. 170), and the wisdom and policy of the statute considered and sustained. (*U. S. v. Gillis*, 95 U. S. Rep., 464.)

It is one of the many claims that may be aptly termed bills "without merit," and the committee, therefore, upon the general grounds assigned, report adversely to the bill and recommend that it do lie upon the table.

ADDITIONAL ASSOCIATE JUSTICES SUPREME COURT OF
OKLAHOMA.

MAY 17, 1892.—Committed to the Committee of the Whole House on the state of
the Union and ordered to be printed.

Mr. BYNUM, from the Committee on the Judiciary, submitted the fol-
lowing

REPORT:

[To accompany H. R. 3983.]

The Committee on the Judiciary, to which was referred the bill (H. R. 3983) entitled "A bill to provide for three additional associate justices of the supreme court of the Territory of Oklahoma, and for other purposes," having duly considered the same, recommend the following amendments:

In section 1, line 4, strike out the word "five" and insert in its stead the word "four," and in line 5 strike out the word "four" and insert in its stead the word "three."

In section 2, line 2, strike out the word "three" and insert the word "two" in its stead.

In section 3, line 1, strike out the word "six" and insert in its stead the word "five."

Also add the following new sections:

SEC. 7. That temporarily, and until otherwise ordered by law, the additional associate justices to be appointed under this act may from time to time, as the business of the courts may require, be assigned by the supreme court of said Territory to either of the judicial districts thereof as associate to the judge assigned to such district, and said judges may hold separate hearings and trials or sit and act together for the expedition of the business of such district as they may deem expedient.

SEC. 8. That the supreme court of the Territory shall designate not exceeding four places in said Territory at which may be tried cases to which the United States is a party, and shall designate and attach districts of the Territory to said places, respectively.

SEC. 9. That in cases where the court sits with the powers and jurisdiction of a district or circuit court of the United States, juries may be obtained under the rules of the common law; and in such cases, procedure, pleading, and practice which conforms to the rules of the common law and the laws of the United States shall not be deemed erroneous solely because it may not also conform to procedure, pleading, or practice under the Territorial statutes.

And when so amended that the bill be passed.

The necessity for the organization of additional courts and the appointment of additional justices is fully presented in a letter by the Hon. Horace Speed, United States attorney for the Territory, to the honorable Attorney-General, a copy of which was transmitted to the committee; also, by a letter from the Hon. Charles Brown, attorney-general for said Territory, to the subcommittee considering the same. Copies of same are published herewith as an appendix to this report.

DEPARTMENT OF JUSTICE,
Washington, D. C., February 18, 1892.

SIR: Inclosed I hand you copy of a letter, relating to a bill now before the Judiciary Committee in reference to additional judges for the Territory of Oklahoma, written to me by Horace Speed, esq., United States attorney for that Territory.

Respectfully, yours,

W. H. H. MILLER,
Attorney-General.

Hon. WILLIAM D. BYNUM,
House of Representatives.

WASHINGTON, February 12, 1892.

SIR: A bill is now being considered by the Judiciary Committee of the House of Representatives, which provides for three additional judges in Oklahoma, and also embraces two provisions as to practice out there which will very much simplify and lessen expense in practice. One provision is that hereafter the United States cases shall be tried at not exceeding four places in the Territory to be selected by the court. The other is that when the court trying a case proceeds according to the rules of the common law and the United States Statutes it will not be deemed error because the procedure did not also comply with the Territorial statutes as to procedure.

The bill is right and should pass.

The need of judges is shown by these facts: Since September 1, 1890, to February 1, 1892—one year and five months, or 518 days—there were filed in the Oklahoma district courts about 3,400 cases, being at the rate of nearly seven per day, counting Sundays, or eight each working day. The courts disposed of 1,950 cases, or about nearly five for each working day, and 1,450 are yet on the dockets. This shows an exceptionally heavy docket, and great labor performed by the courts. In addition to this, the two new counties opened in September last, with 20,000 new people now in them, and the seven new counties in the Cheyenne and Arapahoe reservation of 4,500,000 acres, which the Secretary of the Interior says will be opened for settlement about April 1, into which will go not less than 50,000 people, will make a volume of new and urgent business which the already overtaxed judges can not possibly attend to.

The present law requires the judges to hold two terms of court in each county each year. This makes thirty-two terms of court besides the supreme court, which they can not possibly hold and do justice to their work.

The provision as to trying the United States cases at not exceeding four places in the territory will save much expense and delay. The law now requires that they shall be tried in each county, and that the first week of each term shall be devoted to United States business. The Federal business commonly takes much more than that, and then comes the Territorial criminal cases, and the result is a practical denial of justice in civil cases. Very few if any jury civil cases have been tried at Oklahoma City since March last, and not many at Guthrie. The result is very bad. Then, as the terms are so short, few involved criminal cases have been tried and frequently witnesses and jurors after waiting are dismissed because the term closed without the cases coming up.

The provision as to procedure save an immense amount of labor and appeals, and make definite what must otherwise remain debatable. Those courts have common law and chancery jurisdiction, and sit with the powers of circuit and district courts of the United States, as well as of the Territory. They try persons for offenses against the United States. Many of the United States statutes as to procedure when the United States is a party are mandatory; frequently it is not possible to know whether they are mandatory or not.

The Oklahoma organic act provides that the court in United States cases shall use the same procedure as in other cases. In practice, however, that is often impossible. After that act was passed the Oklahoma statutes were framed, hurriedly printed without any index, with many contradictory provisions under widely separated titles, and some Utopian rules of indefinite extent. They provided that all cases not therein specially provided for should be tried according to the rules of the common law and assimilated as near as may be to the rules of practice on the United States side of the district court; these and other sections clearly showed that the Oklahoma legislature intended the United States cases to be tried according to the established practice of Territorial courts, but the judges have already confessed their inability to bring order out of these discordant directions and have disagreed as to the statutes governing at certain points.

The bill will remove all such difficulties and save much time and expense.

Very respectfully, your obedient servant,

HORACE SPEED,
United States Attorney, Oklahoma Territory.

The ATTORNEY-GENERAL,
Washington, D. C.

To the Hon. William D. Bynum, chairman, Henry H. Powers, and F. C. Layton, members of the subcommittee to whom has been referred House bill No. 3983 for consideration :

Being familiar with the condition of affairs in Oklahoma as they pertain to the business of the courts of that Territory, I beg leave to submit the following statement of facts, which I think tend to show the necessity of an immediate provision by Congress for an increase in the number of judges.

In the summer of 1890 the Territory was organized, with six counties quite well settled and one county very sparsely settled, and containing altogether a population, as shown by a census then taken, of about 60,000 people.

The organic act provided for three judges, and they were appointed. They immediately divided the settled portion of the Territory into three judicial districts, and assigned a judge to each district. One of said districts contained three counties and the others each two, and each of said judges has been holding court almost continuously since the organization of the Territory. These judges are required to perform the work of United States judges, Territorial circuit courts, and the supreme court of the Territory, and in addition thereto are required to do nearly all the work that in a State is performed by justices of the peace.

The volume of business has been so great that the judges have been unable, working all the time, to dispose of over one-half of it in the seven original counties.

At the last term of court in the county in which I reside (Logan County), there were over five hundred cases on the trial docket for that term, of which number ninety-five were United States criminal cases, one hundred and five were Territorial criminal cases, and three hundred and one were civil cases.

In Oklahoma County, which adjoins Logan County, there were on the trial docket for the last term a larger number of cases than in Logan County, and among the number were one hundred and thirty-five United States criminal cases and ninety-four Territorial criminal cases. And in every county in the Territory the amount of litigation is equally great in proportion to the population.

Last September two new and large counties were opened to settlement and organized, and in those counties no terms of court have yet been held, on account of the judges being unable to give them the time for a term of court, and yet their jails are filled with prisoners waiting for trial (and this is true of the older counties as well), and the expense of keeping them in jail is a burden that the taxpayers are unable to bear. In addition to the two counties last mentioned, six new counties were organized and thrown open to settlement in April, 1892, and in one day 60,000 people are said to have become settlers in those six counties, and all of those new counties will immediately need the benefit of courts.

The area of the settled portion of Oklahoma, not counting Beaver County (which was very sparsely settled), when the three judges were appointed was about 2,500 square miles. The area of the settled portion at this time, not counting Beaver County, is 25,350 square miles, and including Beaver County is 32,000 square miles, to which it is expected will soon be added, by the opening of the Cherokee Strip and the Wichita country, about 14,000 additional square miles, which will make an aggregate of 46,000 square miles of settled territory.

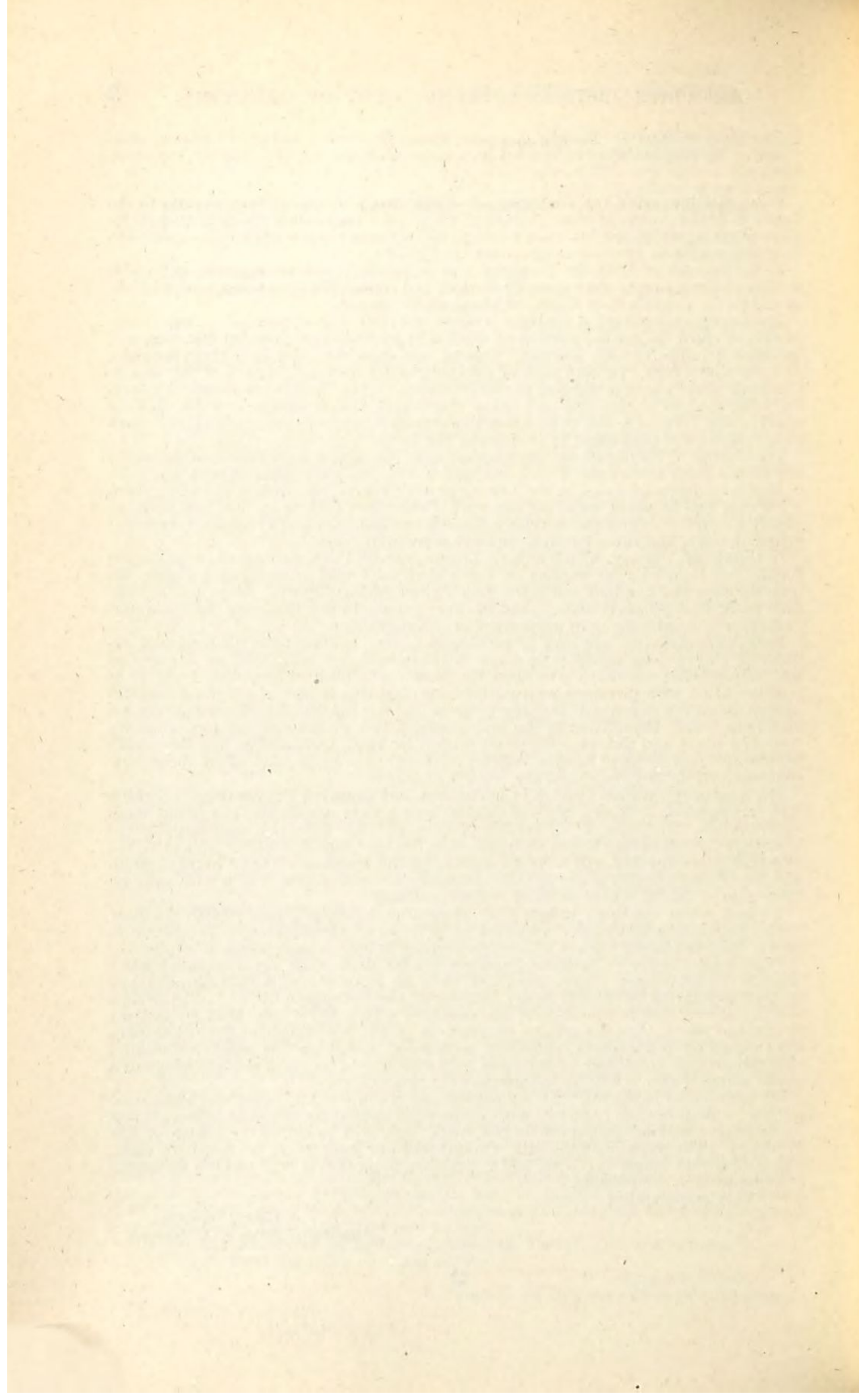
We had, when the three judges were appointed, a population of 60,000; we now have a population of 150,000, not counting Indians, of which there are several thousand. We confidently expect before next spring to have a population of 500,000.

Experience has shown that our present court facilities were not adequate for our original 60,000 people. How, then, can they be expected to be sufficient for our present population of 150,000, to say nothing of the immediate future? Experience has also shown that in the original six counties, which have now been settled for over three years, that the volume of business is not lessening; on the other hand the number of new cases is constantly increasing, and it may be safely calculated that the present condition of business will continue until our Territory becomes a State, which we hope will be within the next three years.

We have asked in the bill which you have under consideration for three additional judges. I believe that I can say with perfect safety that for the next three years a dozen judges will not be able to do the work that will be before the courts of our Territory. The passage of the bill, while it will not give us all the relief we need, will yet be very beneficial to us, and I therefore hope that it will receive favorable consideration at your hands.

Very respectfully,

CHAS. BROWN,
Attorney-General of Oklahoma.



MASTER OF THE SWORD, U. S. MILITARY ACADEMY.

MAY 17, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. MITCHELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 5448.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 5448) to fix the rank of the master of the sword at the U. S. Military Academy, has had the same under consideration and reports it back with accompanying documents.

Of the many instructors at the Military Academy, the “master of the sword and instructor of gymnastics and swimming” is the only one holding no military commission. He has sole charge of the physical development of the cadets. The training of the body is as essential to the usefulness of the future officer of the Army as the schooling of the mind. The present incumbent has the pay, the quarters, the clothing—in fact every belonging of a first lieutenant, except the shoulder straps. To confer upon him this dignity would not increase the expense to the Government. At the same time it would improve the discipline at the Academy.

In the opinion of the committee the “master of the sword and instructor of gymnastics and swimming” at the United States Military Academy ought to be given a rank in keeping with the importance of his function. It therefore recommends the passage of the bill.

WAR DEPARTMENT,
Washington, April 9, 1892.

SIR: Referring to Department letter to you of the 14th ultimo, transmitting the adverse report of the Adjutant-General, dated March 11, 1892, on House bill 5448 of the present Congress, which proposes that the master of the sword at the United States Military Academy shall have the rank, pay, and emoluments of a first lieutenant of infantry, I have the honor to invite your attention to the inclosed report of the Adjutant-General, dated the 7th instant, recommending, upon further consideration of the matter, that the rank provided for in the bill be conferred on the master of the sword at the Academy.

Attention is also invited to the copy of the letter from the Adjutant-General to the Superintendent of the Academy, dated March 24, 1892, and to the copy of his reply, dated March 25, 1892, relative to the qualifications possessed by the master of the sword, which would commend him for an appointment as a commissioned officer of the Army.

Very respectfully,

L. A. GRANT,
Acting Secretary of War.

The CHAIRMAN OF THE COMMITTEE ON MILITARY AFFAIRS,
House of Representatives.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, April 7, 1892.

SIR: Referring to my report of the 11th ultimo, on House bill No. 5448, "to fix the rank of the master of the sword at the U. S. Military Academy," I have the honor to state that upon further consideration of the proposed change made by this bill and inquiry as to the fitness of Mr. Koehler, the present sword master, for appointment in the Army; and in view of the increasing importance of instruction in physical culture at all the great universities, which is specially needed by the cadets at the Military Academy, I now beg to recommend that the master of the sword at West Point be given the rank provided for in this bill.

I believe that the best interests of the Military Academy and the Army will be served by conferring upon the instructor referred to a well defined rank suited to the importance of his duties, which will soon be increased by instruction in the gymnasium. It can only be a short time before it will become necessary for the staff at West Point to be increased by a professor of hygiene, appointed from the medical corps, to superintend physical culture at the Military Academy, and assign it a rightful place in the curriculum of the institution. The appointment of Mr. Koehler as instructor, with proper rank, in this branch of military training will be the first step in this important matter, and is important now as helpful in securing that high order of physical culture which has been provided for by the erection of a gymnasium of the most approved construction.

Very respectfully,

J. C. KELTON,
Adjutant-General.

The SECRETARY OF WAR.

MARCH 24, 1892.

DEAR GEN. WILSON:

I wish you would inform me, personally, whether you regard Mr. Koehler, the sword master, as a person in every way suited for the rank of a commissioned officer and desirable as an associate for the professors and instructors at West Point.

While I fully recognize the desire to reward Mr. Koehler for the excellent service rendered, I hesitate to recommend that he be commissioned as an officer, for should he prove at some future time unsatisfactory, either in an official or social way, there would be no way of displacing him so long as his conduct was of a character not triable by court-martial.

I think this matter, in view of past experience at the Academy, of sufficient importance to merit very careful consideration.

Sincerely yours,

J. C. KELTON,
Adjutant-General.

U. S. MILITARY ACADEMY,
West Point, March 25, 1892.

MY DEAR GEN. KELTON:

Replying to your letter of the 24th instant, it gives me pleasure to say that I regard Mr. Koehler as a gentleman of high character and one who would always be a welcome guest at my house; he has all the privileges of the West Point army mess, and his name is printed with the list of officers whenever it is necessary to send around orders, circulars, etc.

I believe that both socially and officially he is worthy of a commission, and in this Col. Michie and Lieut. Carson, with whom I have to-day conversed, fully agree with me. Mr. Koehler is somewhat sensitive on account of the fact that he is not a commissioned officer, and therefore seldom joins in our social entertainments; and in all outdoor sports he is a most welcome addition to the officers' club; his wife is a quiet, unobtrusive lady, and his children are always neat in appearance and polite in their behavior.

Mr. Koehler is probably better qualified for the position he holds than nine out of ten men who might desire it; he has good judgment, is cool, calm, and dignified, and handles cadets quite as well as if he had been one himself.

In giving him rank, I do not think any mistake will be made or that in the future anyone will regret it.

Yours very truly,

JOHN M. WILSON,
Colonel of Engineers.

Gen. J. C. KELTON, U. S. Army,
Washington, D. C.

HEADQUARTERS U. S. MILITARY ACADEMY,
West Point, N. Y., March 8, 1892.

DEAR SIR: Replying to your letter of the 7th instant, I have the honor to return herewith, with my cordial approval, House bill No. 5448, giving rank to the master of the sword at the U. S. Military Academy, and respectfully invite attention to pages 6 and 7 of my last annual report (copy herewith) and to pages 95 and 96 of the report of the last Board of Visitors.

Mr. Koehler, the present master of the sword, performs also the duties of instructor in gymnastics and swimming. He is faithful, energetic, and remarkably well qualified, both physically and intellectually, for his important work.

Very respectfully,

JOHN M. WILSON,
Colonel of Engineers, Superintendent.

Hon. JOHN S. MITCHELL,
House of Representatives.

(Through the Adjutant-General, U. S. Army, Washington, D. C.)

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EXAMINATION AND CLASSIFICATION OF CERTAIN MINERAL LANDS.

MAY 17, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. AMERMAN, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany H. R. 8796.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 6831) to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho, have carefully considered the same and hereby report back a substitute for said bill and recommend the passage of said substitute.

The substitute is the same in substance as the original bill, with a few additions and alterations in matters of detail only.

In support of the substitute bill recommended the committee deem it proper to submit the following statement of facts:

By act of Congress of July 2, 1864, the Northern Pacific Railroad Company was incorporated and authorized to construct a railroad and telegraph line from Lake Superior to Puget Sound and the Pacific coast by the northern route. It was given a right of way and a right to use material for construction from the public lands, and in addition thereto a grant of every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of the railroad line it might adopt through the Territories of the United States, and ten sections per mile on each side of such line through the States; and if any such odd sections had been reserved, occupied, or otherwise disposed of before the map of the route of the road was filed the railroad company had the right to select other lands in lieu thereof in alternate sections and designated by odd numbers, not more than 10 miles beyond the limits of the lands first granted. All mineral lands were expressly excluded from the grant, and in lieu thereof unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of road were to be selected as provided by the act. By the act the term mineral was not to include iron or coal.

By a subsequent act of Congress the indemnity limit, as it was called—that is, the limit within which lieu lands might be selected—was extended upon certain conditions a second 10 miles beyond the first 10-mile indemnity limit provided for in the act. The railroad was not completed within the time prescribed in the act of 1864 nor within the additional time allowed by certain subsequent acts of Congress.

The reservation of mineral lands (except coal and iron) from the grant to the railroad company was in accordance with the uniform legislation of Congress to exclude mineral lands from all railroad and other

general grants or from settlement and to preserve such lands for mining purposes only. And this is shown by the act of January 30, 1865. (13 Stat. L., p. 567).

The length of the line of the Northern Pacific Railroad in Montana is about 780 miles and in Idaho about 90 miles. At the date of the grant these States were Territories, and the amount of land under the grant was 40 sections per mile in the granted limits, with the right, if necessary to supply deficiencies, to take 10 sections per mile within the indemnity limits. The following is from the report of the Commissioner of the General Land Office to the committee:

As to the quantity of land within the Northern Pacific land grant and indemnity limits in the States of Montana and Idaho, the quantity surveyed within said grant, the number of acres selected by the company, and the present status of such selections, the following is submitted as an approximate estimate:

	Acres.
Granted in Montana	17, 838, 080
In 10-mile indemnity limits	4, 992, 000
Selected by company, now pending.....	4, 336, 285
Surveyed within the grant	14, 758, 720
Granted in Idaho	1, 900, 800
In 10-mile indemnity limits	576, 000
Selected by company, now pending.....	122, 520
Surveyed within the grant	403, 200

No lands have been patented to the company in either of said States. The selections made by the company are pending before this office, and the adjustment of them necessarily involves the question of the character of the lands affected by the granting act, which must ultimately be determined by the Department.

As the surveys mentioned include both odd and even sections it will be noticed that only one-half the number of acres surveyed are odd sections claimed by the railroad company. A large portion of the land grant is, therefore, still undesignated by sections. The surveys made have been largely confined to agricultural lands, although they include some very valuable mines upon odd sections. The greater portion, however, of the lands probably mineral within the limits of the grant are yet unsurveyed, and, being generally of a mountainous and rough character, are expensive to survey and not valuable for agricultural purposes. They are not likely, in the slow progress made by the Government in public-land surveys, to be officially surveyed for many years; and even if they should be surveyed an examination and classification as to their mineral or nonmineral character would be necessary before they were conveyed to the railroad company; otherwise the company might get title to mineral lands in direct violation of the terms of the grant.

The Commissioner of the General Land Office in his report says:

It will be conceded that the grant to this company, within said States, should be adjusted without unnecessary delay, but in case the grant is adjusted by patenting to the company such lands within the limits of the grant as are not known to contain mineral, without special examination, it is clear that many tracts will be so transferred that will ultimately be found to contain mineral. At least one-third of the area within the limits of the grant, in said States, is obviously mineral land.

It should be stated here that the Secretary of the Interior and the Commissioner of the General Land Office, in their reports to the committee, both approve of the examination and classification of the mineral lands within the Northern Pacific grant, although they do not, in some particulars, approve the bill here reported.

Included within the land-grant limits of the Northern Pacific Railroad are the richest and most extensively developed mines in Montana and Idaho. Both of these States are now in the foremost rank of silver,

copper, and lead producers, and are contributing many millions annually to the country's wealth. Within this grant are also included millions of acres of land not yet entirely or at all explored for minerals, but which, from their location, their geological formation, and their relation to known mines, probably contain mineral deposits as valuable as any yet discovered. With no survey or classification of these latter lands it is easy to see the difficulties under which the prospector or the miner labors. If he finds a mine he can not tell if it is upon land that will be classed as mineral, or whether it is in an odd or even section, or whether he can buy it from the Government or must fight the railroad company for it. He can not expect to enlist capital to assist him under such circumstances. A state of affairs like this loudly demands some remedy.

But the situation is made worse by the claim of the railroad company that the legal construction of the act of 1864 gives the company all lands within the grant, *not known to be mineral at the date of that act*, or at least at the date when the company filed the map of its route in 1872 or 1882.

The representatives of the company are not very definite as to which of these dates they rest their claim upon; but, at all events, they go back as early as 1882. Their contention is that the grant of lands took effect at the passage of the act and attached to specific lands upon the filing of the map of the route, and that the condition of the lands as to whether mineral or not depends upon what was known at this latter date. The result of this is that the company now claim title to all odd sections within the grant not known to be mineral in 1882 (at latest), even if developments since that time have established their mineral character and value beyond question.

This seems to the committee a most extraordinary claim, but the matter is now before the United States Supreme Court for decision, and it is not within our province to discuss it here.

But the disastrous effect of the company's claim, if conceded, can be readily seen. Many of the most valuable mines in Montana, and almost all of those in Idaho, have been discovered since 1882. The company, not satisfied with its immense land grant and its other special privileges given by the Government, now seeks, upon what at best seems but a technicality, to take from those who have discovered and developed them the very mineral lands expressly excepted from the grant. The committee do not believe that there is any equity in the claim of the railroad company, and they do believe that that company have received enough from the United States, and that their rights should be rather restricted than enlarged. The claim of the company, in our opinion, furnishes another reason why some such remedy as is provided in the bill reported is required. Whatever may be the decision of the court, the necessity for the classification of the mineral lands will still exist.

The Government, and the citizen also, has a right to know what are and what are not mineral lands as well as to whom they belong. The miner, when he finds valuable mines, should be able to ascertain whether he can purchase them from the United States or is at the mercy of the railroad company.

We think enough has been shown to demonstrate the necessity of speedy legislation upon this subject. We believe the bill reported will afford a practical remedy for the evils now existing. It provides for the appointment of three commissioners for each land district, who have power to summon witnesses and administer oaths and hear testi-

mony, and who are to examine and classify the lands in each district with reference to their mineral character, and to report such classification and return the testimony each month to the local land office. Notice of the classification of the lands upon each report is to be published, and any person interested may protest against such classification and obtain a hearing before the local land office, and from that an appeal may be taken to the Commissioner of the General Land Office and to the Secretary of the Interior as in other cases. The United States district attorney may appear at these hearings and protect the interests of the Government. After final decision in case of a contest, or after approval by the Secretary of the Interior, the classification reported is final, except for fraud. Mineral lands are defined in the bill, and certain rules to govern the commissioners in their classification are prescribed.

The classification is to be by sections where the land is surveyed, and where it is not, by tracts of such extent and so designated as to boundaries as the commissioners may determine. The committee consider it very important that the lands shall not have to await the very slow process of survey before the classification, and believe the mineral lands can be as well classified by large tracts as by sections. The general character of the land where mines are found varies little in any given locality, and it is not usually difficult to decide what portion of the country is mineral and what is agricultural.

The mineral lands lie almost entirely in the mountain ranges and are not valuable for agriculture, or usually for anything but the minerals they contain. These mountain ranges, although frequently expensive and difficult to survey, can be readily designated by boundaries having reference to natural objects. In this manner the classification can be speedily, and the committee believe correctly, made, and until it is made no patents are to be issued to the railroad company. Any injustice to the railroad company or to anyone concerned is guarded against by the hearings and appeals provided for.

The committee do not believe that the proposed bill works any injury to the company. It is the interest of the company, as well as of the Government and the citizens, to have the question of the character and ownership of the mineral lands settled as soon as possible. Whatever lands the company is entitled to they should receive from the Government and have control of. Upon the other hand, they should not be permitted to acquire title to the mineral lands. For such lands as may be excluded from the grant the company may under the act of 1864 be entitled to compensation within the indemnity limits. This, at least, is the claim of the company.

The proviso to section 7 of the act preserves all rights of the Government as against the railroad company.

The amount of the appropriation of money asked for in the bill is based upon the estimate and recommendation of the Secretary of the Interior upon a similar bill. The classification would not necessarily occupy much time or be very expensive. In the eastern land districts of Montana almost all the lands are agricultural and could be readily classified. By classification of the lands the mineral lands would also be brought into market and the United States enabled to realize from their sale. Mining claims bring \$5 per acre to the Government when sold, which is four times the usual Government price for agricultural land, and twice the price of such land within the railroad grant. Upon the whole, therefore, the expense to the Government would not be large, and the benefits realized from the bill, we believe, would be very great.

EXAMINATION AND CLASSIFICATION OF CERTAIN MINERAL LANDS.

MAY 24, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SWEET, from the Committee on the Public Lands, submitted the following

VIEWS OF THE MINORITY:

[To accompany H. R. 8796.]

The substitute offered by those favoring it has in view a compromise and settlement of the mineral land controversy between the Northern Pacific Railway Company and the people of the States of Montana and Idaho. This controversy is now pending on an appeal from the ninth circuit to the Supreme Court of the United States. It arises over the statute granting certain lands to the Northern Pacific Railway Company. The grant in question gave to the Northern Pacific Railway Company every alternate section of land within a limit of 40 miles on each side of its definitely located track. The grant excepted from its terms "mineral lands." The exception is couched in the following language, to wit:

Provided further, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural land in odd-numbered sections nearest to the line of said road may be selected as above provided.

The question involved through Montana and Idaho was first decided by a court of justice December 9, 1889. At that time, Judge Sawyer of the ninth circuit, United States court, rendered a decision in the case of *Francoeur vs. Newhouse*, in which he held that the title to all land not known to be mineral at the time the grant took effect vested in the company. An extract is presented from the reasons given by him in that case upon which he based the opinion rendered:

The parties to this grant, both the United States and the grantee, must be presumed to have contemplated a grant in view of the condition of the lands as they were known and appeared to be at the time the grant took effect. In the exception of mineral lands from the grant Congress must have meant not only lands mineral in fact, but lands known to be mineral, or at least such as were apparently mineral and generally recognized as such. Congress could not have contemplated that the discovery of a paying mine, fifteen or twenty years after the making of the grant and the performance of all the conditions by the grantee required to perfect the title and render it irrevocable, should vitiate the grant. If so, then such a discovery fifty or a hundred years after would effect the same result. In granting the public lands, Congress must be presumed to deal with them in view of the conditions as they are known or supposed to be at the time. Exceptions must be presumed to refer to matters that are really apparent upon inspection. Any others would be altogether too indefinite to be valid. The conditions constituting the exception ought certainly to be ascertainable at the time the grant takes effect or they ought not to be operative. Otherwise the greatest confusion and inconvenience, public and private, must necessarily result.

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The grant should point out what is granted in such certain terms that the grantee may be able to ascertain by inspection, and at the time the location is definitely fixed and becomes operative, what specific tracts of land are granted and what are excepted from the grant. These lands, soon after the grant, were conveyed in trust under authority of the law as security for the bonds issued, out of the proceeds of which the road was constructed, and the proceeds of these sales were devoted by the trustees to the redemption of the bonds. Is this security to be impaired or destroyed by taking from the operation of the grant in which at any future time gold or other valuable metals may be discovered? If so, all of the lands may sooner or later revert to the United States, and these bondholders, and those who in good faith have purchased the lands of the company without being aware of the mines secluded in their lower depths, may be largely injured.

This quotation, taken at some length from Judge Sawyer's decision, gives, we think, the substance of the theory upon which he based the opinion. Judge Sabin, United States judge for Nevada, occupied the bench with Sawyer at this hearing. He concurred in the opinion rendered by the circuit judge in the following language:

I fully concur in the decision just read, but I desire to add a word in confirmation of it, or rather in regard to a matter connected therewith that has often arisen before the court, and which is very liable to arise in the future. In the judgment just rendered it is decided that the grant by Congress under discussion was a grant *in presenti*, and that upon compliance with the terms of the grant the title to the land vested in the railroad company. This matter has been so often before the court, and so often decided by this court and the Supreme Court, that it is not worth while to mention it further. There seems in this matter, where the Government has issued title to land, either to railroad companies or to the State by way of its school lands, or to private parties, to be a misunderstanding on the part of many people that all these lands are still subject to exploration by outside parties for mines or anything else the same as though they were public lands of the United States. The act of Congress which opens the public lands to exploration for mines speaks only of public lands. Indeed, it is public land only that Congress has authority to grant a license to go upon. I think, after the Government has, as in this case, divested itself of the title to land, that any man going upon the land to explore for mines or anything else is a mere trespasser. The lands are to that extent withdrawn from exploration for mines, and I am utterly at a loss to see how anyone can assume that he can acquire a legal title to a mine upon my land, or anyone's land, the title to which has been divested from the Government, or how he can assume to acquire the necessary title from any act of Congress that I have any knowledge of.

As I observed, these matters have incidentally come so often before the court for discussion that I think it worth while to call the attention of the profession to the fact that by the express terms of Congress only public land is open to exploration for mineral. As said by the Supreme Court in the case of *Belk vs. Meagher* (104 U. S., 279), location confers no right of entry upon lands, unless the previous right to enter on that land to locate a mine or for other purposes preëxisted. Right of entry is the paramount thing. If a man has the right to enter upon the public land or a right to enter upon my land to explore for mines, then he may make a location; or, if he has not any right to enter in the first instance, then his location amounts to nothing, whatever he may discover. I know of no law that gives anyone a right to explore my lands or any company's or corporation's lands for the purpose of making a location upon it. The Supreme Court has often held that no right of preëmption or otherwise can be initiated by trespass.

It might be proper to call attention to one other phase of this case. From the syllabus we take the following:

The patent issued under the Congressional grant is only a definite instrument of evidence that the conditions have been performed and the title vested.

Again, discussing the patent issued by the Interior Department:

An exception inserted in a patent which is not authorized by the statute to be inserted is void.

We call attention to these two phases of the case because there seems to be a conflict between the Department of the Interior and the courts as to the office performed by the patent in land-grant cases. The Secretary of the Interior holds that title is not vested in the company to the extent that a citizen may not enter upon and explore lands in-

cluded within the terms of the grant until after a patent issues. The courts seem to take an opposite view. Sawyer holds as follows:

It has been so often decided that a grant to a railroad company under this and similar acts is a grant *in presenti*, passing and vesting a present title, only to be defeated by a failure to perform the conditions subsequent and suitable judicial proceedings on the part of the United States to forfeit them, that it is only necessary to cite the authorities without further discussing the question.

Sawyer then cites *Railroad Company vs. Railroad Company*, 97 U. S., 496, and other cases, continuing:

"There be, and is hereby, granted" are words of absolute conveyance and import a grant *in presenti*. This court has held that they can have no other meaning. (*Railroad Company vs. United States*, 92 U. S., 741.)

Again:

Mr. Justice Field went over the subject fully in *Denny vs. Dobson* (32 Fed. Rep., 899), in which he held that not merely the equitable title but the legal title to the land passed by the legislature *in presenti* in such sense that an action in ejectment could be maintained upon it; that the patent provided for was not necessary to pass the title, but was only a convenient instrument of evidence, citing a passage from the opinion of the Supreme Court in *Langdeau vs. Hanes* (21 Wall., 521), as follows:

"In the legislation of Congress, a patent has a double operation; it is a conveyance by the Government, when the Government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously existing title, it is documentary evidence, having the dignity of a record of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights, because it also embodies words of release or transfer from the Government." (*Denny vs. Dobson*, 32 Fed. Rep., 524.)

The mineral land question was next decided by Sawyer in the United States circuit court for the district of Montana, June 12, 1891, in the case of the *Northern Pacific Railroad Company vs. Barden* (46 Fed. Rep., 492). The question involved was precisely the same as the one presented in *Francoeur vs. Newhouse*. The question is so important, involving as it does the future of the mineral lands of western Montana and northern Idaho, that we quote the following statement of the case from the dissenting opinion of Judge Knowles:

The complaint sets forth sufficient facts to show that plaintiff received a grant from the United States of all odd alternate sections of land within 40 miles of the line of its railroad as definitely located in Montana, not mineral, and which at the time its line of railroad was definitely fixed were not reserved, sold, granted, or otherwise appropriated, and free from preëmption or other claims of right. It is further set forth that the land described by the plaintiff was a portion of one of the said odd sections within 40 miles of the line of the road of plaintiff as definitely located; that they have taken possession of the same and now withhold the possession thereof from plaintiff. It is not stated directly that the said land is nonmineral, or that it was known to be such at the time of said grant July 2, 1864, nor at the time the general route of said railroad was located in 1872. It is alleged, further, that it was more valuable at said date for grazing than mining purposes, and that when the land was surveyed in 1868 it was returned by the surveyor as nonmineral. In 1886, it is alleged that plaintiff listed in the United States land office at Helena, with other lands, the premises in controversy, and paid for filing such list the fees allowed by law, and the receiver duly accepted the same and proved up said land and certified the same to the Commissioner of the General Land Office, and that that list remains in the above Land Office, and that no part of the fees so paid have been returned to plaintiff. It is also alleged that at the time of filing said list said land was not known to be mineral, nor had any value for mining purposes, but that during the year 1888 certain veins or leads of rock in place, bearing gold, silver, and other precious metals, were discovered thereon; and thereafter, to wit, on the 20th day of June, 1888, a portion of defendants, and under whom the others claim, located said lodes as mineral land, * * * and they are now in possession of said locations and are extracting ore therefrom, and have taken therefrom ore of nearly the value of \$1,000, and that the value of all the property is over \$6,000. The defendants have demurred to this complaint on the ground that the same does not state facts sufficient to constitute a cause of action.

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Under the issue raised by this complaint and demurrer, the question presented in *Francoeur vs. Newhouse* was again brought to the attention of the court, namely: Did the grant to the Northern Pacific Railway Company convey to said company all odd sections of land within 40 miles of the line of said road, as definitely located, not at the date of said definite location known to be mineral? Judge Sawyer reaffirms the decision and the principle which he had already rendered in the first case referred to. An extract from the decision of the court in the case of the Northern Pacific Railway Company *vs.* Barden will show that the court is of the same opinion still:

Upon further consideration I am still satisfied upon principle with the ruling in these cases (referring to *Francoeur vs. Newhouse* and cases cited under it), and think that to hold otherwise would be disastrous to the great interests of all the States having mines of the precious metals, and to none more so than the State of Montana. The defendant's counsel assail the decision in *Francoeur vs. Newhouse*, and insist that the title to no land which, in fact, contains valuable mines secreted in its lower depths at the time the title attached to the specific lands and became perfect, passed to the company under the railroad grant, although the existence of the mineral was unknown or unsuspected at the time, and that there was nothing to indicate that any mine was there, even though the existence of the mine could not, by reasonable diligence, have been ascertained; and one of the Senators from Montana, in an elaborate speech in the Senate during the session of the last Congress, criticising the opinion in *Francoeur vs. Newhouse* with great ability, supported the said view. Said he, in the course of his speech:

"If one thousand years hence a mine is discovered in an odd section of land which it will pay to work, thereby it will be demonstrated that on the 2d day of July, 1864, Congress had that particular land in view when it said that it excepted that mineral land out of the grant, and that it not only then becomes, but it is thereby demonstrated that it has always been, during the future years, the property of the United States."

And the Senator from California, a most skillful mining expert, and a large owner of mines in Montana, interrupted the Senator's speech with the remark: "In a few years from now, I have no doubt mines will be discovered in many of those lands." Either the doctrine in *Francoeur vs. Newhouse* or that stated by the Senator from Montana, as quoted, must be the true doctrine. There is no middle ground upon which to stand. No middle line can be drawn, and statutes of limitation do not run against the United States. Nearly all statutes require construction. Such is the imperfection of the human intellect and human language that it is difficult if not impossible to draft an act that shall exactly cover every possible case contemplated by the author, and nothing more, and that his intent shall be apparent to every intelligent mind. The statute of frauds of England, drawn by one of England's ablest lawyers, is a good illustration. It is said by English law writers that it has required a great many more suits to settle the meaning of the statute of frauds than there are words in the statute.

The point presented here was next raised in the circuit court for North Dakota before Caldwell, circuit judge, and Thomas, district judge. The opinion of the court was delivered by Caldwell, Thomas concurring. He affirms the view taken by Sawyer in the two cases referred to. The following is from his opinion:

It is said that mineral may be discovered in some of these lands at some future time, and that when such discovery is made it will then be apparent that such lands did not pass by the grant. Mineral lands are undoubtedly excluded from the grant, but there must be a time and mode of determining once for all what lands are mineral. The determination of this question can not be left to the action of future agencies. The mineral lands excluded from the operation of the act are the lands known to be such at the time the company acquired its title. (Here follows authorities cited.) No mineral has been discovered in any of these lands to this day. The title to the lands has therefore vested in the company. The discovery of mineral in any of these lands in the future will not redound to the prejudice of the company, but its profit, for it will own the mineral as well as the land.

We have then, passing directly upon the question involved, two United States circuit judges, to wit, Sawyer and Caldwell; and two United States district judges, Sabin and Thomas. All of these judges cite numerous decisions of the Supreme Court of the United States as

supporting the principle enunciated in these cases. On that proposition it is not necessary to express an opinion, as our object is to ascertain the status of this case to-day and consider whether a compromise is desirable. Those, however, who are interested in following out the principle may, by reading the opinions to which attention has been called, find the cases decided by the Supreme Court, which the circuit judges claim justify the action taken by them.

We now present the views entertained by Judge Knowles, in his opinion dissenting from Sawyer, in the *Northern Pacific Railway Company vs. Barden*, which is really the only legal opinion we have in support of the theory that the title to lands not known to be mineral at the time the grant to the Northern Pacific Railway took effect, but upon which mineral has since been discovered, did not pass to the company.

It will be observed that in the opinions referred to the courts held that title vested in the railroad company upon compliance by the company with the terms of the grant. Upon this point there is no difference of opinion among legal authorities. The real point of difference is whether, in excepting mineral lands from the terms of the grant, the mineral lands referred to were limited to those known to be mineral at the time the grant took effect. Judge Knowles takes the position that the grant did not carry mineral lands, and that any time prior to the issuing of the patent by the Government to the company, a prospector was and is at liberty to enter upon the odd sections within the limit, and if he found mineral, locate a valid claim. This is the view also entertained by the Interior Department. As in our judgment the issue is really limited to the proposition referred to, we will quote from Judge Knowles's opinion on the question of inserting the word "known" before the words "mineral lands" used in the grant.

I come now to the consideration of how the phrase "known mineral lands" came to be used. In the case of *Johnson vs. Towsley* (13 Wall., 72), the doctrine was recognized that the Land Department was a special tribunal, having authority to hear and determine questions which might arise in the sale and patenting of lands. In the case of *Steele vs. Smelting Company* (106 U. S., 447), in speaking of the Land Department, the Supreme Court said:

"That Department, as we have repeatedly said, was established to supervise the various proceedings whereby the conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of the different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has to perform to secure title, the nature of the land, and whether it is of the class opened to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation."

In the case of *French vs. Fyan* (93 U. S., 169), the Land Department having determined that a certain tract of land was swamp land, the Supreme Court treated this as the determination of a special tribunal, which was binding in all actions not brought to annul the patent. In that case the Court said:

"The patent, therefore, which is evidence that the lands contained in it had been identified as swamp lands under that act, relates back and gives certainty to the title of the date of the grant."

This and the preceding decision referred to certainly maintain the doctrine that the Land Department is clothed with authority to determine whether land is mineral or swamp or not.

Following these decisions are the cases. (Here follow decisions cited.) The opinion in both of these cases was delivered by the distinguished judge who delivered the opinion in the case of *Francoeur vs. Newhouse*. In the first he said:

"The land officers were charged with the duty of ascertaining whether the lands were subject to be patented or not, and that determination is conclusive, at least in this action."

In the latter case, he said:

"There must be some point of time when the character of land must be finally determined, and for the interest of all concerned there can be no better point to determine this question than at the time of issuing the patent." * * *

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The case of *Davis vs. Weibbold* fully sustains the view that the Land Department is intrusted with the determination of the question as to whether land is mineral or not. * * * I have found no case where the Land Department has passed upon the question of the character of land patented that the patent has been sought to be set aside, except for some fraud practiced upon the Land Department, or there was some mistake, such as would entitle the United States to relief in a court of equity. If the land was known to be mineral, no fraud was practiced in that Department, and the title to such land was unassailable. These were the reasons that induced the Supreme Court in *Deffeback vs. Hawke* to declare if the land was not known to be mineral at the time of the sale or issuing a patent, there was no cloud upon a patent for such land purchased as agricultural, and this is the reason why the term "known mineral lands" was used.

The difference between the judges is here made plain. One line of authority contends that the issuing of the patent does not strengthen at all the title of the company to land; that the patent is simply a convenient evidence of title, but that the title was complete in the company to all lands granted, not known to be mineral at the time the grant took effect, without the patent. The dissenting judge contends that title is not complete in the company until patent issues.

The view presented by Judge Knowles is further emphasized in the following quotation from his opinion:

Until a patent is issued these lands are not fully identified, and in any action concerning them the railroad company must resort to other evidence to identify them and show that they are the lands granted. When a patent issues this will show that the lands described in the same are lands granted to the company, and no identification will be needed; and this patent only can be impeached by an action in equity brought by the Government to set the same aside for fraud or on some ground cognizable in a court of justice, and will prevail in any action against any one claiming by a junior title. (*Meador vs. Norton*, 11 Wall., 442.) I do not think Congress intended to leave it always an open question, to be settled by the verdict of a jury, as to whether or not any specified portion of an odd section within the limits of plaintiff's grant were granted to it or not, but that the question for consideration is whether or not a given piece of land was known to be mineral at the date of applicant's grant. How is it to be otherwise determined? It must be supposed that the Land Department before it issues to plaintiff a patent for any tract of land is to know upon investigation as to whether it was known to be mineral or not on the 2d day of July, 1864.

Upon one point all of these judges agree, namely, upon the following sentence from Judge Knowles's very able opinion:

I do not think Congress intended to leave it always an open question, to be settled by the verdict of a jury, as to whether or not any specific portion of an odd section within the limits of applicant's grant were granted to it or not.

If it is not to be left unsettled, when and how is it to be settled? If it is to be settled by any action on the part of the Government, and of course it must be, the bill in question presents the only method that has ever been suggested. It recognizes the right of the Government to select its mineral lands and except them from the grant. It is true that the Government is somewhat tardy in making this selection, and perhaps unjust to the creditors of the Northern Pacific Railroad Company, who under an act of Congress hold the grant as security for money loaned. But it must also be borne in mind that the Northern Pacific Railway Company was somewhat tardy in filing its map of definite location. The Government agreed to survey these lands, and has not done so; so that as between the Government and the company perhaps equities and honors are about easy. The original charter of this company excepts mineral lands, and gives to the company lieu lands in place thereof. The bill recognizes the grant for the purpose of segregating the mineral lands, but not for making good the loss caused thereby. This substitute recognizes the law in full. If it is to be recognized for one purpose, should it be recognized for the other?

The decisions of the courts up to this time are in favor of the right of the company to hold these mineral lands and all mines discovered and located upon odd sections subsequent to the date of the definite location of the route. These decisions give to the company every mine and prospect in northern Idaho located upon an odd section within 40 miles of the road. It gives to the company some of the greatest mines in the world. No person can say what the decision of the Supreme Court will be. All we know is that in carrying this contest to the Supreme Court we enter that tribunal with the weight of authority to date decidedly against us. The Northern Pacific Railroad Company can not and will not dismiss these cases. The company lands are all mortgaged, and even if these cases were dismissed to-morrow, the mortgagees may still intervene and demand that all lands held by the grant shall be retained by them as security. But while these great mineral belts would make the security valuable for the creditors of the company, the retention of them contrary to what the people generally believe to have been the spirit and intent of the law would destroy the business of that company from the eastern line of Montana to Puget Sound. It would make the security more valuable, but it lessens the ability of the railroad company to pay the debt.

Upon this point Mr. Villard stated, when before the Committee on Public Lands, that the prejudice against the company through Montana because of this contest had cost the company hundreds of thousands of dollars. He represents further that the company occupies a position between the prejudice of the people upon one hand and the anxiety of its creditors upon the other. The difference in the committee upon this substitute arises right here: The company, anxious for the good will of the people, but bound to satisfy its creditors, seeks a compromise. It agrees to the classification provided for by the bill, but it asks in lieu of the lands thus taken, the right to select other lands in place thereof within the limits of the grant. Those favoring the substitute think it is better to compromise now than to take the chance of being obliged to compromise after the company may have won its case in the Supreme Court of the United States. Those favoring the bill as it stands, take the chance of winning the case in the Supreme Court of the United States, and simply segregating these mineral belts from the grant, without giving to the company any land in lieu thereof. The object of those favoring the substitute is to dismiss litigation, and without further ceremony or anxiety on the part either of the prospector, mine owner, or creditor, turn these great mineral belts over to the Government, and give to the railroad company what the Government promised to give them in the first place, subject to the forfeiture provision in this bill.

A cloudless title to our mineral lands is sought to be accomplished by the introduction of this substitute, peace between the people and the railroad, between the company and its creditors, and the solution, once for all, of one of the most dangerous questions ever brought before the courts or the people of the country.

In letters written to Senator Power, of Montana, by Mr. McNaught, counsel for the Northern Pacific Company, the latter agrees that the company will dismiss these cases and end all controversy under the provisions of the substitute.

One other phase, and the entire question will have been submitted. If the Supreme Court affirms the decision in the Barden case, then the railroad company owns these mineral lands. It will be too late to compromise the difficulty, because there would be no authority for giving

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land in lieu of the mineral land to which title has vested in the company, as it is only for losses that lieu lands can be given. We are then confronted with this proposition: Either the company must voluntarily surrender the mineral lands, or the miner and prospector must deal with the railroad company. If the lower court is reversed then the company is entitled to its lieu land under the original grant, so that nothing is given by the substitute in addition to what the original grant called for.

The facts and conditions have been presented at length, with a view of enabling the House to pass upon the advisability of a compromise.

WILLIS SWEET.

J. A. PICKLER.

H. TOWNSEND.

C. D. CLARK.

SUBSTITUTE REPORTED FROM THE MINORITY OF THE COMMITTEE ON PUBLIC LANDS.

Substitute for section 7, down to the word "Provided," in line 1, page 8, H. R. 6831:

Said railroad company is hereby authorized to select in lieu of lands so classified as mineral, situated in the State of Montana and in the State of Idaho, and within forty miles of the line of said road, an equal quantity of nonmineral lands of the United States, to which no adverse rights shall have attached at the time of making such selection, lying within the States through which said railroad runs, upon the filing by said railroad company at the local land office of the land district in which any tract of land selected in pursuance of this act shall lie, a list describing the tract or tracts so selected, and the payment of the fees prescribed by law in analogous cases. The Secretary of the Interior shall cause to be executed in due form of law, and delivered to said railroad company, the patent of the United States to the lands so selected. In case the tract so selected shall, at the time of selection, be unsurveyed, the list filed by the company in the local land office shall describe such tract in such manner as to designate the same with a reasonable degree of certainty, and within a period of three months after the land including such tract shall have been surveyed and the plats thereof filed in the local land office, a new selection list shall be filed by said company, designating such tract according to such survey, and in case the lands originally selected, as described in the list on file in the local land office, shall not precisely conform to the official survey, said company shall be permitted to describe said tract anew so as to produce such conformity: *Provided*, That said company is hereby authorized to make good its losses occasioned by the selection of mineral lands as herein provided from even sections within the present limits of said grant if the odd sections within said limits shall not be sufficient to supply lieu lands in place of mineral lands excepted from the grant under the act of Congress approved July 2, 1864: *Provided*, That the acceptance of the terms, conditions, and impositions of this act, and the classification made as aforesaid, by the said railroad company, acting under the direction of its board of directors, and by the trustees of the mortgagees of said railroad company, holding as security the land grant of said railroad company, or any portion thereof, situated in said States, and by the trustees of the holders of bonds issued under said mortgages, shall be made within ninety days after the passage of this act, and the same shall be served on the Secretary of the Interior: *Provided further*, That all actions now pending in the courts of either of said States, or in any court of the United States, in which the Northern Pacific Railroad Company claims any mineral lands in either of said States, shall be dismissed by said company at the time of accepting the provisions of this act, and the classification made as herein provided, with the privilege of selecting lieu lands as aforesaid, shall be a settlement of the mineral land question in the said States of Idaho and Montana: *And provided further*, That unless the terms, conditions, and impositions of this act shall be accepted within the time herein specified, and all actions dismissed, as in this section provided, then the provisions of this act authorizing said railroad company to select lands in lieu of those classified as mineral under the provisions hereof shall be null and void; but otherwise the classification and segregation of the mineral lands in Montana and Idaho shall be made as in this act provided.

SHIP CANAL CONNECTING LAKE ERIE WITH THE OHIO RIVER.

MAY 17, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CATCHINGS, from the Committee on Railways and Canals, submitted the following

REPORT:

[To accompany H. R. 7495.]

A ship canal to connect the waters of Lake Erie with the Ohio River in the neighborhood of Pittsburg would be a work of national importance, the effects of which would be felt in the business of the entire country.

It would enlarge and better the means of transportation between the great ore-producing region of the Northwest and the great iron manufacturing districts of western Pennsylvania and eastern Ohio.

It would increase the means of distributing the furnace stocks from these districts.

It would immensely cheapen to the consumer the price of the great staple of commerce—iron.

It would furnish to the growing Northwest and to Canada both the bituminous and anthracite coals of Pennsylvania at cheap rates, and at the same time with profit to the producer.

It would furnish an avenue for the prompt delivery into the lakes of armed vessels should need for such means of protecting our lake cities unhappily arise.

It is demanded by the present needs of the iron-producing trade, and will in a short time be absolutely indispensable, since the natural and necessary growth of that trade must far exceed the possibilities of railroad transportation.

The Mahoning Valley, in Ohio, and the Shenango Valley and Allegheny County, in Pennsylvania and the immediate adjacent region, produced in 1889 28 per cent of the entire pig-iron output of the United States in that year, or an aggregate of 2,378,170 net tons. This considerably exceeded the aggregate combined product of Alabama, Illinois, New York, Tennessee, Virginia, and New Jersey.

The ore entering into this production came in the main from the lake region, and had to be transported from the lakes to the furnaces by rail.

In 1889 an amount of ore equal to 79.6 per cent of the entire receipts of ore at Lake Erie ports in that year was destined for points which would be accessible by lake vessels upon a ship canal from Lake Erie to the upper Ohio.

It is estimated that the cost of pig iron produced in the Pittsburg district in 1889 was properly distributable as follows: Ore, coke, lime-

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stone, and sand, 55.1 per cent; labor, 11.35 per cent; administration, 4.3 per cent; freights, 29.25 per cent.

It is further estimated that rail freights on ore for a distance of 150 miles were equal to 97.2 per cent of the lake freight on the same material for average distance of 650 miles.

The immense general advantage to result from the application of water instead of railroad freights in the manufacture of an article of such universal use as iron will be apparent from these figures.

It will also be apparent that reduced freights would in a very short time pay the original outlay in the construction of a work of internal improvement of such commanding public importance.

But its importance becomes the more apparent when we consider what must necessarily and naturally be the demands of the near future.

Population and wealth are increasing with us at a tremendous rate. So must the output of iron, a prime essential in all the business of life and of the commerce of a great people, increase also.

Upon this subject we quote from an article by J. M. Goodwin, a civil engineer of large experience and skill (now deceased). He says:

In his recent extremely interesting and valuable address at the New York meeting of the American Institute of Mining Engineers, Hon. Abram S. Hewitt, basing his calculation upon thoroughly authenticated data, clearly set forth in the address, estimated that by the year 1900 the United States will have reached a production of 15,750,000 gross tons of pig iron; that is to say, 17,640,000 net tons. Mr. Hewitt put the production of pig iron in the United States in the census year 1890 at 9,579,779 net tons. The estimated product of 1900 exceeds this by 8,060,221 tons. The average annual increase would be 806,022 tons. Actual production in 1888 was 7,268,507 net tons; in 1889 8,517,068 net tons; increase in this one year 1,248,561 net tons.

In view of facts cited in his address, Mr. Hewitt, with direct reference to tariff legislation, said: "One of the perplexing elements in the consideration of the future of the iron business is removed from the problem when the conclusion is reached that henceforth the ability of Europe to supply its own demand for crude iron will be fully tasked, and the United States must look to its own resources for supply of the great demands of the coming century."

He continues, as much to the point which we wish to present as if he had been speaking to the question which we are now considering: "So far as we are concerned, then, the question is substantially whether this country can nearly double its production (of pig iron) in the next ten years without so seriously increasing the cost of iron as to restrict consumption and arrest the rate of progress at which the world is now moving forward."

We may safely assume that, in view of the practically unlimited stores of fuel and iron ores existing in their country, the people of the United States will not, by any neglect of means at their command, fall back from the position among iron-producing nations which they have attained; and as enlargement of means for and diminution of cost of transportation of raw material are, to any unprejudiced observer of the conditions affecting the matter in question, obviously necessary to a maintenance of our rate of progress in iron production, we conclude that the country will, without any unnecessary delay, adopt such means to the end desired as shall approve themselves to its deliberate judgment as indisputably better than any other possible.

Were water carriage not positively less costly and generally more convenient than land carriage for transportation of commodities which, for any reason, are preferably handled in bulk, we should nevertheless, in order to maintain the current rate of increase in production in the iron-making districts most favorably situate with relation to the ore fields of the Northwest and to the great coal-producing region of Pennsylvania, respectively, necessarily supplement the existing railway capacity for transportation of ores from Lake Erie to those districts by establishment of a proper water way between that lake and the Upper Ohio.

The Ohio and Pennsylvania iron-producing districts already mentioned, which in 1889 produced 2,378,170 net tons, will have increased their joint product to something more than 4,750,000 net tons in the year 1900, provided adequate increase of facilities for supplying them with ore shall have been *in due season* effected; and the only means by which such adequate increase is possible is the water way to connect Lake Erie and the waters of the Ohio, as in the bill contemplated.

The stock of ore to be laid in at furnaces to provide for a production in one year of 4,750,000 net tons (equal to 4,241,071 gross tons) of pig iron, from Lake Superior

and Menominee ores, is, on the basis of actual receipts by the furnaces in said three districts in the year 1889, 8,566,963 gross tons.

No person aware of the present situation at the several iron-making points in the three districts referred to will give very much weight to any assertion to the effect that the railways now in operation will be by any means able to deliver at the furnaces, multiplied or increased in capacity in proportion to the increase of product in view, the great tonnage of ore just indicated as to be laid down at these furnaces in the year 1900.

In connection with this subject of what are bound to be the necessities of the immediate future, we may properly recur again to the question of the cheapness of water as compared with rail transportation, and the influence of the former on the latter.

In a hearing before this committee upon a bill relating to a ship canal from the Great Lakes to the Hudson River, Mr. S. A. Thompson, secretary of the Duluth Chamber of Commerce, said:

A careful series of experiments on the Grand Trunk Railway showed the actual cost of the movement of freight, exclusive of interest on bonds and dividends on stock, to be 0.5 cent per ton per mile. The average cost as reported to the Interstate Commerce Commission is almost exactly 20 per cent greater than this, while the lowest cost which I have been able to find on record is in the case of the Lake Shore and Michigan Southern, which in favorable years has reported a cost of 0.4 cent per ton per mile.

The average cost on the Erie Canal, according to figures from the State officials, is exactly half as much as that; while on the Aire and Calder Canal, in England, General Manager Bartholomew, who seems to be the greatest genius in canal management which the world has yet produced, reports that he has been able to reduce the cost of transporting minerals to 0.024 cent per ton per mile, and for general merchandise to 0.068 cent, the average being 0.046, and the cost of returning the empties being included in each case.

The figures grow more and more interesting as we go on, and when we turn to the Great Lakes, where we have deeper water, we find results which are almost startling.

Mr. James J. Hill, the Western railway president before mentioned, related some time ago the incident of his conversation with the president of the Eastern railway, and added: "I might have continued to share his belief in the ultimate triumph of the railway over the steamship if I had not had occasion since that time to build and operate steamships for myself." These steamers carry 2,700 tons of freight on the present depth of water and make the run from Duluth to Buffalo in three and a half days, at an average cost of \$120 per day; this is equivalent to 0.015 cent per ton per mile. This means that we are doing to-day on the Great Lakes for \$1 what it costs the best railway in the United States \$26 to do. In other words, the general conclusion may be deduced from these facts that the larger the carrier and the deeper the water way the less is the cost of transportation.

* * * * *

Another fact which is not generally known is that the best steamships on our lakes maintain a faster average rate of speed per hour than is maintained by any railroad on freight trains. Of course freight trains run about 16 miles an hour while they are running, but they must side track to get out of the way of passenger trains and there are other causes of delay; so that they only get an average rate of speed of 9 miles per hour, while the best modern steamers on the lakes make the run between Chicago and Buffalo at the rate of 16 miles per hour for the whole distance; so we are able to carry goods in less time than is required by the railroads and to do it at one twenty-sixth of the cost.

The effect on railway rates of water competition is exceedingly interesting and important. On roads subject to water competition freight rates invariably go up when navigation closes in the fall and go down again when navigation reopens in the spring.

A study of the statistics in Poor's Manual, or the report of the Interstate Commerce Commission, shows that the lowest rates are found on roads most subject to water competition. Take, for instance, the Lake Shore and Michigan Southern, with its average rate of 0.653 cent, and the Michigan Central, with 0.726 cent per ton per mile, and compare these with the rates on the Chicago, Milwaukee and St. Paul and Chicago and Northwestern roads, which were 1.06 and 1.03 respectively. A multitude of similar facts could be adduced, but the strongest proof of the supreme control exercised by water ways on the railway rates is furnished by the railway men themselves. In an argument before the Committee on Commerce of the House of Representatives, made in opposition to the "Reagan bill," in March, 1882, Mr. G. R. Blanchard, the well-known railroad attorney, said:

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"The rail-carrying charges upon the great east-bound traffic to the seaboard, for both consumption and export, are, therefore, and must continue to be, limited by natural causes, and can not be beyond or as much as those which, in their absence, would be deemed fair and reasonable, and are always below the rates for like distances, articles, and speed by rail anywhere in the world. So potent are these facts that it is within the power of, and is often the case that the combination or independent action of, a few sail vessels at Chicago can, in their seasons of navigation, procure rates from owners of an equal capacity of Erie canal boats from Buffalo to New York, which added to their own rates to Buffalo and transfer charges will fix, and have in actual practice fixed and regulated, the entire eastward through maximum rail freight charges for a time upon all kinds of grain and many other articles. * * * Can any safer limitation or check be legislated than the inflexible limitations nature enforces in its uncontrollable rivalry? * * * The application of water results are inexorable in their effects upon railroad rates within periods ranging from seven to eight months in each calendar year and usually all the year in rivalry with western rivers. * * * In view of all these facts, I now say, with Mr. Fink: 'Compared with this powerful regulator of railroad transportation tariffs, the efforts of State or Congressional legislation to prevent extortionate charges appear to those at all conversant with the subject as perfectly useless.'"

It is a very limited and narrow view of the subject, however, that takes into consideration only the advantage to be derived by a canal from Lake Erie to the Ohio to the iron and ore trade.

Our traffic, originating on the Great Lakes, is not only immense in volume but is varied in kind.

In a speech upon the river and harbor bill, made in the House Committee of the Whole on May 5 last, Mr. Haugen, of Wisconsin, made this statement:

The traffic of the lakes is a surprise to those not familiar with it.

Comparing it with the Suez Canal we find that in 1890 there passed through the Sault Ste. Marie Canal, at the outlet of Lake Superior, 10,557 vessels having a net registered tonnage of 8,454,435 tons, while the Suez Canal during the same year shows only 3,389 vessels of a net registered tonnage of 6,890,014 tons.

Nearly three times as many vessels and over 1,500,000 more tons of freight went through the Sault Canal during the seven and a half months it was open to navigation than passed through the Suez during the twelve months.

The entries and clearances in New York in 1889 represented 11,051,236 tons, and the entries and clearances in all the seaports in the United States represented 26,983,315 tons. The entries and clearances from London and Liverpool during that year were 33,430,617 tons.

The entries and clearances on the Great Lakes in the same year were, according to the United States census, 27,700,000 tons; and in 1890 the total freight traffic of the Great Lakes was 33,303,324 tons, exceeding by 6,000,000 the combined entries and clearances of all the seaports of the United States, Atlantic, Gulf, and Pacific, and equaling the combined entries and clearances, both coastwise and foreign, of London and Liverpool, the great commercial centers of the world.

These shipments embraced 9,000,000 tons of iron ore, 5,000,000 tons of grain and flour, 8,000,000 tons of lumber and forest products, 7,000,000 tons of coal, and 4,500,000 tons of miscellaneous freight. This was carried by a floating equipment of 2,784 vessels, having a carrying capacity of 1,254,275 tons and a commercial value of \$48,809,750.

Of the total tonnage of shipping built in the United States during the year ending June 30, 1889, 5 per cent was built on the Western rivers, 8 per cent was built on the Pacific coast, 41 per cent on the Atlantic coast, and 46 per cent was built on the Great Lakes, the Great Lakes again leading all others.

Looking at the question of the necessity of the proposed canal from another point of view the argument in its favor is equally strong.

Thomas P. Roberts, an engineer of great experience, who was one of a commission appointed in 1889 by the governor of Pennsylvania to inquire into the feasibility of such a canal as the bill contemplates, has this to say about the river interests of Pittsburg:

The river trade at Pittsburg furnishes employment for a greater aggregate actual tonnage in vessels than is owned at any American port, either on the lakes or on the seaboard. For the reason that the coal vessels are unnamed, or from being referred to simply as "packets," the greater portion of this tonnage is not registered in the

United States Shipping Gazette, and consequently the facts regarding them are known to few outside of those directly interested in the navigation of the Ohio River.

Although there are 5,000 boats regularly engaged in the canal trade between Buffalo and Albany, in the Erie Canal, the aggregate capacity of such vessels is scarcely more than one-third as great as that of the boats and barges owned in the single port of Pittsburg engaged in the coal trade alone.

As this is a matter having important bearing on and suggestive of what one item in the possible future traffic of the proposed canal may be, the Commission made an effort to obtain the statistics of the commercial marine of the port of Pittsburg, and although the attempt was made to have the figures complete, and although useful information supplementing its own work was furnished it by a special agent engaged in the United States census work, several small owners could not be found, while others did not properly classify their boats, and a few of the more important shippers omitted smaller vessels known as "flats," which accompany fleets carrying the fuel of the towing steamers.

From reports received from twenty-five firms and individuals engaged chiefly in the coal trade the following figures are herewith presented:

	Number.	Tonnage.
Coal boats	1,467	1,174,600
Coal barges.....	1,766	958,100
Coal flats	648	120,800
Total	3,891	2,253,500

The average carrying capacity of coal boats is about 850 tons, and they are generally made in rectangular form, 170 feet long by 26 feet wide, with sides 10 feet high, which permits them to be loaded very frequently to $8\frac{1}{2}$ feet draft, the actual displacement of such a boat being about 1,125 tons.

A number of 1,000-ton model decked iron-ore barges are included in the table; but, as a fact the great majority of the coal barges have a capacity of between 400 and 500 tons when loaded to the usual or full limit of 7 feet.

The coal shipped annually from the Monongahela River amounts to about 4,000,000 tons.

We continue to quote from Mr. Roberts:

The reputation of the coal, from what the geologist designates as the "Pittsburg vein," as one of the best gas, steam, blacksmith, and coking coals, is thoroughly established along the waters of the Ohio and Mississippi, and it may be questioned if any coal has yet been discovered in quantity sufficient to supply any possible demand which equals it in all the qualities named. There are coals richer in gas, others freer of iron and sulphur, others still that produce more steam per pound, and again others cleaner and more desirable for domestic use, but scarcely are any such in the market which satisfy, with one brand, so many wants.

Until within a comparatively recent period, coal from this particular vein was unknown at many of the ports on the Great Lakes, from northern Pennsylvania. Upon the advent of natural gas in the industrial establishments and dwellings in Pittsburg, almost immediately there was a loss of fully 10,000 tons daily of this coal, which had furnished a local trade for the railroads about the city. For a time it was believed that most of the "railroad mines" operating in the Pittsburg vein south and east of the city would have to be closed. In this emergency the operators began shipping to some of the lake harbors where the Pittsburg coal had been previously little known, and their enterprise has been followed with very successful results, for during the present season more than 900,000 tons of this coal has reached the lake ports direct by rail from the vicinity of Pittsburg.

Another event of recent occurrence is perhaps even more striking: Owing to the long continued navigable periods which have been witnessed upon the Ohio during the last three years, the Cincinnati and Louisville markets have been overstocked with Pittsburg and other coal, and if relief had not been found for the surplus the mining operations on the Monongahela would have been greatly crippled for want of boats to store it in. This relief has been given at Cincinnati and Fort Madison, Ind., and Louisville, Ky., where coal elevators have been put in use to load this coal on cars for Chicago and Milwaukee. Hundreds of thousands of tons of Pittsburg coal thus annually reaches the lakes, after being first transported from 468 to 600 miles on the river, and thence sent 300 to 400 miles on railroads not specially adapted for coal business.

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The total quantity of Pittsburg coal now reaching lake cities is considerable more than 1,200,000 tons annually. At some of the mines on the Monongahela there can be witnessed coal being loaded on boats destined, perhaps, to light New Orleans with gas and make the steam used by vessels on the Gulf of Mexico, whilst at the same time trains of cars are to be seen loading with the same fuel destined for Erie, Ashtabula, Fairport, or Cleveland, from which ports it is now being shipped even to Canadian cities. Pittsburg coal is occasionally shipped from Ashtabula, on Lake Erie, and thence through the twenty-five locks of the Welland Canal to Toronto and other points on Lake Ontario.

From the same Pittsburg vein on the Monongahela River, above the head of navigation, and from the midst of the mountains of West Virginia, both the coal and the coke made from it is shipped by the Baltimore and Ohio Railroad to Baltimore, across the heavy grades of the Cheat and Allegheny mountains, from which port it is re-shipped to New York and Boston on schooners. Toward the West from the same point it is carried by rail to Detroit, and even Minnesota, and to Denver, Colo., standing greater rail charges, perhaps, than any other common bituminous coal mined elsewhere in the country.

It is not, in this relation of the simple facts regarding the very widespread demand for this particular coal, sought in any way to disparage the value and importance of the coal from other districts. The demand for good coal at moderate price it seems can not be satiated, and every field possessing a merchantable article, if facilities for its transportation are present, appears to be able to develop a trade and expand it indefinitely. That the Pittsburg coal is sadly lacking in transportation facilities to the northwestern markets where prices are highest, in the region absolutely without any coal mines, and yet also the most rapidly developing part of the country, is to assert simply that which everybody knows to be true.

If any coal field can profit by the cheap, certain, and rapid transit which a ship canal can allow a very low-priced commodity, the Pittsburg district would surely experience such a benefit by the construction of the proposed canal between the Ohio River and Lake Erie.

When coal goes out of one district to another, however, the "balance of trade," so to speak, is really in favor of the consumer, who may operate his mills with it, and thus furnish employment to thousands and increase his capital in many ways; while, on the other hand, for the employment of miners to labor for little more than their living expenses and but little corporate profit, the Pittsburg coal men and their mines willingly would offer to go into this exchange with their fellow-citizens of the Northwest.

If such reciprocity as this were once completely recognized in the Northwest, as it in all probability will be in the not distant future, no expense would be spared in constructing the means to produce so desirable a result; and when, as in this case, the Northwest has another cheap commodity in great demand in western Pennsylvania, the same vessels which took the coal out being able to return with ore, there would be completed an example of reciprocal trading, with advantages equal in every respect, perhaps, not elsewhere to be seen in this country on the same scale of magnitude.

The Pittsburg coal vein is nowhere so grandly developed, and its outcrop so easily traced, as it is along the waters of the Monongahela River, where between Pittsburg and Fairmount, W. Va., a distance of 125 miles, it is exposed in the river hills almost constantly in a vein bearing from $4\frac{1}{2}$ to 11 feet thick. One narrow belt of it crosses the river through Fayette County, Pa., northeast of the river for 40 miles, making the celebrated Connellsville coke and coal region.

In regard to coke shipment, it can not be disputed that from the lightness of coke compared with its bulk, the large cubical capacity furnished by the vessels which would be designed for the navigation of the ship canal, would furnish means for the shipment of this product of unlimited extent. At times more than 1,000 carloads of coke are shipped daily for considerable periods from the Connellsville region to the markets east and west, and "car famines" are frequently reported. Such an output of business might be carried on 20 vessels on a canal of the dimensions proposed; not only that, but carried more rapidly to the lake ports, than it is now usually transported on the railroads to the same points.

The quantity of the Pittsburg coal remaining for future generations has been variously stated, but as the figure is inconceivably great we may be contented with the statement of the geologists, when they say that the field is practically inexhaustible.

In the foregoing discussions of the subject-matter of the bill, your committee have merely outlined some of the advantages to accrue to the commerce of the country by the construction of such a canal as the bill contemplates, and have not undertaken to deal with the subject in all its bearings or exhaustively.

A joint resolution of the legislature of Pennsylvania, passed in 1889, authorized the appointment by the governor of a commission to determine the feasibility of a ship canal to connect the waters of Lake Erie and the Ohio River. A commission of competent citizens, after a survey made under its direction, reported in favor of the scheme. Taking into consideration this fact and the national importance of the proposed work, your committee, after consideration, report the bill (H. R. 7495) with the recommendation that it do pass with the following amendment, viz:

Strike out "forty" and insert "ten."

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PURCHASE OF AND CONTRACTS FOR SUPPLIES.

MAY 17, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. ELLIS, from the Committee on the Revision of the Laws, submitted the following

REPORT:

[To accompany S. 550.]

The Committee on the Revision of the Laws, to whom was referred the bill (S. 550) to amend section 3709 of the Revised Statutes of the United States, relating to the purchase of and contracts for supplies, have had the same under consideration and submit the following report:

Under the law as it at present exists the Ordnance Department of both the War and the Navy Departments are prohibited from purchasing articles, no matter how trifling the cost, without first advertising for bids. It frequently happens that these Departments are obliged to make small purchases of articles to be used at once in the completion of models and in making experiments. It not unfrequently happens that the cost of these articles is less than \$100 or \$200. When this is the case the cost of advertising for bids often exceeds the cost of the article or articles needed. It seems to the committee that this is an evil that ought to be remedied and that the proper officers of these Departments should be given the authority, when the cost of the article does not exceed \$200, to make the purchases without incurring the expense of advertising for bids as required under the existing law.

The report of the Senate Committee on Military Affairs that accompanied this bill when it was reported to the Senate is made a part of this report, with the recommendation that the Senate bill pass.

SENATE REPORT.

The Committee on Military Affairs, to whom was referred the bill (S. 550) to amend section 3709 of the Revised Statutes of the United States, relating to the purchase of and contracts for supplies, have had the same under consideration and submit the following report:

A bill similar to the one under consideration was before this committee last Congress, and then received favorable action. It oftentimes happens that the Ordnance Department of both the War and Navy Departments are obliged to buy small articles to be used at once in making experiments or in the completion of necessary models, etc. Very frequently the sum needed is less than \$200, and when it does not exceed this sum the expense of advertising for bids sometimes exceeds the cost of the articles needed.

The report of the committee submitted in the last Congress is herewith appended and made a part of this report, with the recommendation that the bill pass.

REPORT

The Committee on Military Affairs, to whom was referred the bill (S. 2645) to amend section 3709 of the Revised Statutes of the United States, have examined the same and report favorably.

The bill provides that hereafter the War and Navy Departments shall have authority to go into open market and purchase material or supplies to the amount of \$200 without resorting to the long and tedious process of advertising for bids. At present much time is lost in obtaining articles of insignificant value. Dealers bidding for small contracts with existing formalities demand prices above those at which they would sell directly for cash. The limit is so small and the system of governmental accounts so perfect that it is considered that no abuses will follow the introduction of the system, and the committee recommend that the bill pass. It has received the approval of the Secretary of War. This authority is designed to aid particularly the Ordnance Bureaus of the two Departments. The views of the Chief of Ordnance of the Army on this subject are subjoined. The committee offer an amendment extending the change in the statute to the Navy Department.

VIEWS OF THE CHIEF OF ORDNANCE.

Section 3709 of the Revised Statutes requires all supplies to be procured after due advertisement and competitive bidding. From the passage of this law until about five years ago it was not construed to include every purchase of every article for use in the service. It was held that the word "supplies" referred to in the law had reference to those things which the well-known needs of the public service required from time to time in its different branches for its successful and economic administration. The law was evidently intended to guard the interests of the Government and secure, by inciting a healthy competition among dealers, the needed supplies at fair prices. This law was enacted in 1861, when the purchases were of great magnitude. It had then and still has a good effect in enabling the Government to purchase at low figures when the quantity of supplies procured is of any considerable amount.

About five years ago the accounting officers of the Treasury held that the law was applicable to all purchases of material and supplies, both great and small, except when a public exigency existed requiring an immediate delivery, in which case purchases could be made in open market without advertisement or contract.

The enforcement of this view of the law in the case of small purchases has resulted in loss to the United States in both time and money, as well as in the quality of the supplies procured, and I do not think that the framers of the law ever intended that it should apply to the purchase of the small articles occasionally needed in our manufacturing establishments.

Reports from the commanding officers of ordnance establishments, after a trial of nearly five years, show conclusively, that small purchases can not be made as advantageously under the present construction of existing law as they could be if permitted to be made in open market in the manner common among business men.

To meet such cases and to put an authoritative construction on the law, which will place the United States on as favorable a footing as the individual purchaser of like small supplies, I would recommend in the interest of a true public economy that section 3709, Revised Statutes, be amended by inserting after the word "services," on the first line, the words "in excess of two hundred dollars."

The Interior Department makes purchases in open market to the amount of \$500 under existing law.

TO PROTECT TRADE AND COMMERCE.

MAY 17, 1892.—Ordered to be printed.

Mr. BOATNER, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany Mis. Doc. —.]

Your committee, having had under consideration the resolution to protect trade and commerce against unlawful restraints and monopolies, report the same favorably and recommend its adoption.

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SUFFERERS BY OVERFLOW FROM THE MISSISSIPPI RIVER
IN WARREN COUNTY, MISS.

MAY 17, 1892.—Laid on the table and ordered to be printed.

Mr. BRECKINRIDGE, of Kentucky, from the Committee on Appropriations, submitted the following

ADVERSE REPORT:

[To accompany Mis. Doc. —.]

The Committee on Appropriations, to which was referred the accompanying resolution, entitled "Resolution to appropriate \$30,000 for the use of sufferers by overflow from the Mississippi River in Warren County, Miss.," submit the following report:

It was shown to the committee by petitions, letters, and resolutions adopted by a public meeting held at the county seat of the county of Warren, that a large portion of that county is submerged by the floods of the Mississippi River, and that many of its inhabitants have been driven from their homes, having lost their crops and, in many instances, their stock. Their houses are in the water, their hogs and poultry destroyed, and they can obtain no employment. It was shown that this is the third successive year that these lands have been submerged, and, in consequence, that their landlords are unable to aid them. The persons thus made destitute are negroes, who being thus suddenly deprived of means and credit are wholly unable to help themselves. The number of these destitute persons is several thousand, and it is estimated that it will require six thousand rations for three weeks to feed them. By that time it is hoped that the high water will have receded so that they can resume their labors upon their crops.

The resolution, based upon this state of facts, proposes that the Government shall appropriate \$30,000, to be expended under the direction of the Secretary of War in providing food, shelter, and other necessities of life to these destitute persons. The facts presented have excited the warmest sympathy of the committee, and they would gladly report the resolution favorably if there was no other question involved than that of giving succor to persons in distress. But they do not think that the case is one which would justify Congress in making the appropriation asked. There is room for serious argument as to whether, under any circumstances, Congress has the power to take money from the public Treasury and expend it for the relief of destitute citizens in the States. Under our form of government it would seem that the care and relief of destitute and indigent persons devolve solely upon the States and their municipalities, and while at times this Government has appropriated money for that purpose, its power so to do has always been challenged, and the assumption of that power has rather re-

sulted from the sympathy excited by appeals to its generosity than from a belief that it really possessed it. But, however that may be, it has never undertaken to give such relief except where suffering had assumed such magnitude as to make it appear that to meet the emergency would require an expenditure far beyond the means of the local authorities.

The case presented to us falls far short of the requirements as here stated, and upon which alone has it ever been contended that the Government had the right to act. If relief should be given in this case, scarcely a week would pass without an appeal from some quarter being presented to Congress. Local authorities would cease all efforts to make provision for local troubles and misfortunes, private charity would no longer extend its helping hand, and a great part of the revenues of the Government would be devoted to dispensing alms.

Under the circumstances, the committee feel constrained to report the resolution back with the recommendation that it be not adopted.



LATE ENSIGN D. J. TERRELL.

MAY 18, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PAGE, of Maryland, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany S. 570.]

The Committee on Naval Affairs, to whom was referred the bill (S. 570) providing for the removal of the remains of the late Ensign D. F. Terrell, U. S. Navy, from Sitka, Alaska, to his home in the State of Mississippi, have had the same under consideration and beg leave to report it back and recommend its passage, for the reasons stated in the report from the Committee on Naval Affairs in the Senate of the United States and the letter of the Secretary of the Navy, dated the 23d day of February, 1892, herewith appended.

[Senate Report No. 277, Fifty-second Congress, first session.]

The Committee on Naval Affairs, to whom was referred the bill (S. 570) providing for the removal of the remains of the late Ensign D. F. Terrell, U. S. Navy, from Sitka, Alaska, to his home in the State of Mississippi, have had the same under consideration and beg leave to report it back and recommend its passage, your committee concurring in the view held by the Secretary of the Navy in this case, as per letter of the 23d of February, 1892, herewith appended.

NAVY DEPARTMENT,
Washington, February 23, 1892.

SIR: Referring to your letter of the 2d instant, inclosing a copy of Senate bill No. 570, "to provide for the removal of the remains of the late Ensign D. F. Terrell, U. S. Navy, from Sitka, Alaska, to his home in the State of Mississippi," and requesting the opinion of this Department as to the merits of the bill, I have the honor to state that while, under the provisions of section 1587 of the Revised Statutes, the funeral expenses of a naval officer who dies in the United States can not be allowed, it would seem that, in view of the great distance of the ports of Alaska from any other ports of the United States, and of the long sea voyage which must be made in returning from Sitka, the port at which Ensign Terrell died, the case is not substantially different from that of an officer who dies while on duty in a foreign port.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Hon. M. C. BUTLER,
Committee on Naval Affairs, United States Senate.

EXTENSION OF NORTH CAPITOL STREET TO THE SOLDIERS' HOME.

MAY 18, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HEARD, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany H. R. 8815.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 7407) to extend North Capitol street to the Soldiers' Home, have considered the same and report back to the House the accompanying substitute, "To extend North Capitol street to the Soldiers' Home" as amended by the Senate committee, and recommend the passage of the bill.

The parts of a Senate report upon a substantially similar bill are made a part of this report, as follows:

North Capitol street when opened will be the finest and most direct thoroughfare from the Capitol and vicinity to the Soldiers' Home. The street has been opened as far as T street, and, again, from the Soldiers' Home south to the lands of the Prospect Hill Cemetery. The northern portion of the opening has been made by means of a gift of the necessary lands. Only two parcels of ground now block the extension. Of these, the title to the lands of Annie E. Barbour is now before the courts and only condemnation proceedings can effect a passage through them. The cemetery lands also must be condemned, and to such proceedings no objection has been raised.

The amount of land to be condemned is about 250,000 square feet, and the committee recommend that the amount appropriated be reduced to \$10,000. The sum of 1 cent a square foot has been awarded recently in case of two condemnations in that immediate vicinity, and those awards include the rebuilding of fences on line of the new street. As the adjacent property will be greatly benefited by the opening of this street the committee think it should be assessed with half the cost, and have recommended that the bill be amended accordingly. The expense to the Government and the District is \$5,000, or \$2,500 to each.

WILLIAM STANLEY.

MAY 18, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 7307.]

The Committee on War Claims, to whom was referred the bill (H. R. 7307) entitled "A bill for the relief of William Stanley," report:

William Stanley served prior to October 31, 1863, for about ten years as an enlisted man in the U. S. Army, and next as a commissioned officer in the said Army continuously from October 31, 1863, to August 25, 1864. During the time he thus served as a commissioned officer the following provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per centum of their current yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services in the said interval of time from October 31, 1863, to August 25, 1874, merely what other officers of his grade were paid generally, and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of service in the U. S. Army as an enlisted man. For this reason it is alleged he was short-paid for his services rendered as a commissioned officer during the interval from October 31, 1863, to August 25, 1874, partially in the suppression of the late rebellion, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes, as is alleged, to about the sum of \$2,800, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim, which is for a balance of wages for military services. It only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

SAMUEL E. GITTINGS.

MAY 18, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 7482.]

The Committee on War Claims, to whom was referred the bill (H. R. 7482) entitled "A bill for the relief of Samuel E. Gittings, administrator of Erskine Gittings," report:

Erskine Gittings served in the U. S. Army as a cadet at the West Point Military Academy for about five years prior to May 6, 1861, when he was commissioned second lieutenant, Third Artillery, in the U. S. Army, and served therein continuously to September 20, 1880. During all the time he thus served as a commissioned officer the following provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per cent of their current yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services in the said interval of time from May 6, 1861, to September 20, 1880, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval on account of his said prior length of service of about five years in the U. S. Army at the Military Academy. For this reason, it is alleged, he was short-paid for his services as a commissioned officer rendered during said interval of time from May 6, 1861, to September 20, 1880, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price, thus put in controversy, of the one additional ration per diem for every five years of prior service, computes, as is alleged, to about the sum of \$2,500, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim, which is for a balance of wages for military services. It only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

HENRY H. BURTON.

MAY 18, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 7460.]

The Committee on War Claims, to whom was referred the bill (H. R. 7460) entitled "A bill for the relief of Henry H. Burton, administrator of Henry S. Burton," report:

Henry S. Burton served in the U. S. Army as a cadet at the West Point Military Academy for about four years prior to July 1, 1839, when he was commissioned second lieutenant, Third Artillery, U. S. Army, and served therein continuously as a commissioned officer till April 4, 1869. During all the time he thus served as a commissioned officer the following provision of law was in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

He was paid for his services in the said interval of time from July 1, 1839, to April 4, 1869, merely what other officers of his grade are generally paid, and he was paid or allowed no increase of compensation whatever in this interval on account of his said prior length of service of about four years in the U. S. Army at the Military Academy. For this reason it is alleged he was short-paid for his services as a commissioned officer rendered during said interval of time from July 1, 1839, to April 4, 1869, or in about four-fifths thereof, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes, as is alleged, to about the sum of \$2,100, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim, which is for a balance of wages for military services rendered by a distinguished officer. It only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass.

KAROLINE C. REDMOND.

MAY 18, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CADMUS, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 6959.]

The Committee on War Claims, to whom was referred the bill (H. R. 6959) entitled "A bill for the relief of Karoline C. Redmond, administratrix of Nicholas Redmond," report:

Nicholas Redmond served as an enlisted man in the U. S. Army for eighteen years prior to August 10, 1863; next, as a commissioned officer in said Army from August 10, 1863, to May 21, 1878. During the time he thus served as a commissioned officer the following provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., Sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, 10 per cent of their current yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services in the said interval of time from August 10, 1863, to May 21, 1878, merely what other officers of his grade were paid generally; and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of service in the U. S. Army as an enlisted man. For this reason it is alleged he was short-paid for his services rendered as a commissioned officer during the interval from August 10, 1863, to May 21, 1878, partially in the suppression of the late rebellion, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price thus put in controversy of the one additional ration per diem for every five years of prior service computes as is alleged to about the sum of \$3,000, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of her claim if she can.

The committee recommend that the bill do pass.

FORFEITURE OF CERTAIN LANDS.

MAY 19, 1892.—Ordered to be printed and recommitted to the Committee on the Public Lands.

Mr. McRAE, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany H. R. 8390.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 8390) to amend an act "to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," approved September 29, 1890, have had the same under consideration and report it back with the recommendation that it pass.

The purpose of the bill is to amend the first section of the said act, which now reads as follows:

That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed and in operation, for the construction or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain: *Provided*, That this act shall not be construed as forfeiting the right of way or station grounds of any railroad company heretofore granted.

The bill proposes to amend it so that it will read as follows:

SEC. 1. That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not constructed and completed within the time specified in the act making the grant for the construction and completion of the whole of such railroad for the aid or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain: *Provided*, That this act shall not be construed as forfeiting the right of way or station grounds of any company heretofore granted.

The said act of September 29, 1890 (26 Stat., 496), in substance declared the forfeiture to the United States of lands theretofore granted to States and corporations to aid in the construction of railroads to the extent only of lands opposite to and coterminous with the portions of such railroads as were not completed and in operation at that date.

It was a mere subterfuge, and amounted to nothing as compared with the area involved and subject to forfeiture. It restored to the public domain only the depleted tail ends of the vast grants made by Congress to railroad companies—the discarded remnants of desert wastes and mountain ranges, abandoned and thrown aside by the companies because they were deemed worthless, or because they were not considered sufficiently valuable to justify the expense of earning them. It gave the roads all they claimed, and took back what, as a rule, they did not want. The purpose of this amendment is to do what the last

Congress should have done, to extend the forfeiture to the portions of the several railroads, to aid in the construction of which the grants were made, which were uncompleted when the time expired within which the roads were respectively required to be completed by the several laws making the grants. This the committee thinks a beneficent and meritorious legislative proposition. It means something. If it should become a law it would be a measure upon which the country would have occasion to congratulate itself.

The theory on which lands were granted by Congress to aid in the construction of railroads was the opening and development of the unsettled portions of the United States and Territories, and for that reason time was an important element in the grants. Whether sound public policy justified any of these grants or not, it is manifest that a public purpose, that of opening and improving the country by increased facilities for transportation and intercourse, controlled Congress in making them. Every act passed by Congress making any such grant provided in express terms for the time in which the road should be constructed.

In most of the earlier grants a quantity not exceeding 120 sections of the land granted included within a continuous length of 20 miles of the road might be sold in the first instance, and a like quantity of the lands on the completion of each successive 20 miles, or some other specified length of road, might be sold, coupled with the express condition—

That if the road was not completed within ten years (or some other definite period) no further sales should be made, and the lands unsold should revert to the United States.

The following provision will be found incorporated in most, if not all, of the early grants, and when from time to time Congress extended the time for the completion of any of these railroads, it was expressly provided that the lands unearned when the period expired should revert to the United States, viz, section 4 of the act of August 11, 1856 (11 Stat., 30), being "An act granting public lands in alternate sections to the State of Mississippi to aid in the construction of railroads in said State, and for other purposes:"

And be it further enacted, That the lands hereby granted to said State shall be disposed by said State only in manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any continuous twenty miles of either of said roads is completed then another like quantity of land hereby granted, not exceeding one hundred and twenty sections for such road, may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years *no further sales shall be made, and the lands unsold shall revert to the United States.*

This provision will be found in substance in most, if not all, the grants, except those to the Pacific railroads, in the entire series of land grants. There is not a single instance where the time for the completion of the railroad is not expressed in positive terms.

The eighth section of the act of July 2, 1864, making the grant to the Northern Pacific Railroad Company (13 Stat., 365) is as follows:

And be it further enacted, That each and every grant, right, and privilege herein are so made and given to and accepted by said Northern Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the whole road by July fourth, anno Domini eighteen hundred and seventy-six.

The joint resolution of July 1, 1868 (15 Stat., 255), extending the time for the completion of the Northern Pacific, is as follows:

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section eight of an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast," is hereby so amended as to read as follows: "That each and every grant, right, and privilege herein are so made and given to, and accepted by, said Northern Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from and after the second day of July, eighteen hundred and sixty-eight, and shall complete not less than one hundred miles per year after the second year thereafter, and shall construct, equip, furnish, and complete the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-seven."

In the act making the grant to the Atlantic and Pacific and Southern Pacific Railroad companies, being an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," the following section is made applicable to both grants, viz, section 8 (14 Stat., 297).

And be it further enacted, That each and every grant, right, and privilege herein are so made and given to, and accepted by, said Atlantic and Pacific Railroad Company upon and subject to the following conditions, namely:

That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

The act of July 1, 1862 (12 Stat., 489), making a grant of lands to the Union Pacific Railroad Company, contains the following proviso in section 17 of said act:

Provided, That if said roads are not completed so as to form a continuous line of railroad ready for use from the Missouri River to the navigable waters of the Sacramento River in California, by the first day of July, eighteen hundred and seventy-six, the whole of all said railroads before mentioned and to be constructed under this act, together with all their furniture, fixtures, rolling stock, machine-shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and taken possession by the United States.

These various provisions of the acts of Congress making grants of public lands are referred to as indicating clearly the purpose of Congress to make the time within which the railroad should be completed as of the essence of the grants, and it will be observed that in a large number of these grants—indeed, the greater number—the power to dispose of the land by the railroad company was expressly limited to the lands coterminous with each successive 20 miles of the railroad completed within the period named, so that, conceding that the grants were grants *in præsenti*, it would seem clear that the power of the railroad corporation to dispose of the lands granted was expressly limited to the lands earned in successive sections of 20 miles each, so that after the period of time had elapsed, even if title did vest in the railroad company, there was an absolute want of power to make sales beyond the lands earned within the specified periods.

The companies accepted these valuable grants of land from the Government under exceedingly favorable conditions, and failing to comply with the conditions, they at least would have no right to complain if the Government declared the entire grants forfeited, and the justice of this would be still more manifest, in view of the fact of the extreme liberality of Congress in from time to time extending the period within which the railroads were required to be constructed.

Eighty grants, covering 155,504,994 acres, were made to companies that have altogether constructed less than 20,000 miles of road, while

during the same time over 100,000 miles have been constructed by other companies without the aid of land grants, and not a few in the undeveloped West were built far in advance of and before the completion of those aided by large and valuable grants. In many cases the construction of the land-grant roads appear to have been purposely delayed until the country through which the routes were projected had been settled to a sufficient extent to justify the building without aid. Under the law and practice of the Interior Department in permitting the lands to be withdrawn as soon as maps were filed the railroads lost nothing by such delay. They paid no taxes, and the land was all the time increasing in value. It was a profitable policy for them. They were allowed to build wherever and whenever they desired, either within or without the limit, and often allowed to change the route to suit their desires.

The Government has never in any instance acted with such extreme liberality in making grants for public improvements as it has in connection with the construction of railroads. In postponing the construction of the railroads the purpose of the grants was entirely defeated, and in many instances no steps were taken until the lapse of time had resulted in the settlement of the country, thereby adding largely to the value of the land. In such cases it would be a manifest fraud against the settlers on the public lands, as well as the Government, to finally confirm the title in the railroad companies to the lands granted, as it is contended the act passed by the last Congress does.

With the exception of a few of the earlier grants, the railroad companies seemed to have considered the grants as merely gratuitous, not made for the benefit of the people, but for their own benefit, and delayed the fulfillment of their engagements until, by settlement of the country, the value of the grants had been greatly enhanced. They certainly could not have complained if the Government had at once declared the grants forfeited when they had violated the terms on which they received them. Their default unquestionably made it the duty of Congress, in the interest of the people, to declare the forfeiture.

It has been said, however, that if, after the time expired for the construction of these railroads, the companies proceeded to construct them, then Congress ought to be, in equity, estopped from declaring a forfeiture. But this proposition, as between the Government and its grantees, is certainly without foundation. There was no ambiguity in the conditions on which they obtained their grants. The facts were known to the companies. The Government can not be permitted to suffer by reason of the laches of those who for the time being are intrusted with its administration.

The corporations received their grants on clearly expressed conditions. They failed to comply with those conditions, and, as a rule, made no effort to do so. If the grant was of sufficient magnitude and value to furnish the means at once for the construction of the railroads the terms were complied with, and in such cases the act of Congress making the grant was simply a gift of so much wealth to the fortunate grantee company. But when investments were required to be made by the incorporators, in addition to the grant, to construct the railroads, although by the express terms of the grant they were made to "*aid*" in the construction of them, no such investments were made, but the time was permitted to lapse until, by the changed condition of the country, the value of the grant had been increased; then, with a

full knowledge that an actual forfeiture had taken place, these corporations proceeded to secure the benefit of the grants.

It seems impossible to suggest an equity against a forfeiture in behalf of such delinquent corporations. Some of the grants were made nearly forty years ago. Thirty years have elapsed since the actual forfeiture of the grants occurred, and yet within the past few years portions of these roads have been constructed and, in some instances, completed.

In fact, the last grant to expire was that made to the Texas and Pacific Railroad Company March 3, 1871 (16 Stat., 573). That grant expired in ten years and Congress has declared it forfeited.

The neglect and failure of the land-grant corporations to comply with the terms of their grants has been so open and notorious in the judgment of the committee, that as between the Government and them no injustice would be done if the entire grants were declared forfeited, except where, within the time specified, bona fide effort was made to construct the roads, and failure to complete the work within the time only resulted from causes which honest effort could not surmount.

This bill, however, does not forfeit any lands opposite to and coterminous with the portions of any road constructed within the time prescribed for the entire completion. To recognize the grants to that extent is, perhaps, more than the demands of justice require, but the fact is manifest that the question is not simply one between the Government and the corporations, for it is true that from time to time they have made large sales of lands granted. In many instances, undoubtedly, the lands were sold and have come to be the property of bona fide purchasers and settlers, and to the extent that a land-grant railroad was actually completed and in operation without regard to time, a purchaser might be justifiable in assuming that the railroad company had a right to sell the lands.

So the bill leaves the rights of the purchasers and settlers as fixed and defined in the act of September 29, 1890, and will extend the same protection to purchasers and settlers on the lands forfeited by it if it should pass. It does not interfere with any special settlement provided for in the said act.

Then, if the companies did not comply with the conditions of their grants—grants which were wrong in the first place—if the title to the lands have not passed irrevocably to the companies, if the Government has the legal right to reclaim them, why not do so? Why give to the company all that is of real value, and say to a justly outraged public that it must be content to take the meaner share? No innocent settler on any of these lands, no innocent purchaser of any of them, is in peril now.

It is a question between the original parties to the transaction—the Government which made, and the corporations which accepted, the grants. No other person and no other interest is involved. If it be conceded that Congress has the legal right or power to reclaim these lands and restore them to the public domain, the committee can find no satisfactory excuse for failing to do so. If the corporations receiving the grants have any equities to urge in their own behalf, they have neglected their opportunities to do so, though they may expect to have it done for them upon the floors of the House and Senate. In the committee room they have combated the forfeitures upon purely legal grounds. They claim the lands as a matter of legal right, and deny the power of Congress to disturb them.

The committee insists that the grants were made upon such conditions as vests in the Government the right to reënter after the breach thereof. When a legislative declaration of forfeiture is made the question of law can then go to the courts for determination. We shall not discuss that question here. We refer those who may feel an interest in the matter to reports made during the Forty-eighth, Forty-ninth, and Fiftieth Congresses by Messrs. Cobb, Henley, Holman, Payson, and others; all of which can be found in the House document room.

It may not be inappropriate to say that nearly all the older members of the House Committee on the Public Lands have uniformly maintained, both in debate and in reports made by them, that Congress has the right and power to declare a forfeiture of these grants where there is a clear breach of the conditions of the grant.

The contention and argument made in this report was made by the House Committee on the Public Lands in the Forty-eighth, Forty-ninth, and Fiftieth Congresses, and in each of those Congresses bills of the same scope and effect were passed by the House of Representatives, but failed to pass the Senate. The honorable William A. J. Sparks, Commissioner of the General Land Office, in his first annual report in 1885, said:

I respectfully recommend that forfeitures be declared in all cases in which the roads were not completed in the manner and within the time prescribed by law, and that the unpatented lands be restored to the public domain.

The committee insists, as a matter of equity and good conscience, as well as of public right, that the half-way measure of compromise passed by the Fifty-first Congress should not end this matter; and therefore asks the House to extend the forfeiture to all lands earned out of time, and if the legislation should fail again, as it has failed in the past, let the responsibility rest with those who obstruct or prevent it.

The following table will show by what administration made and the estimated area of all the grants, and how much has been patented to the companies:

	Acres.
During President Fillmore's administration there were grants to the States in trust for the railroads aggregating	8, 198, 593. 73
Of which there have been patented	7, 372, 883. 85
During President Pierce's administration there were grants to the States in trust for the railroads aggregating	19, 678, 179. 79
Of which there have been patented	14, 886, 396. 47
During President Lincoln's administration there were grants directly to railroad companies aggregating	74, 395, 801. 61
Of which there have been patented	17, 164, 270. 87
During President Johnson's administration there were grants directly to railroad companies aggregating	34, 001, 297. 77
Of which there have been patented	5, 020, 107. 20
During President Grant's administration there were grants directly to railroad companies aggregating	19, 231, 121. 60
Of which there have been patented	1, 203, 689. 09
The total grants	155, 504, 994. 59
The total patented	45, 647, 347. 48

The name of each railroad company, and the number of miles of the respective railroads unconstructed when the time expired within which,

according to the terms of the grant, they should have been completed, are estimated by the Interior Department to be as follows:

No.	Names of road, etc.	Miles.
1	Florida, Atlantic and Gulf Central R. R. Co	181
2	Florida R. R. Co. (which by change of name became the Atlantic, Gulf and West India Transit Company)	152.65
3	Tennessee and Coosa R. R. Co	36.5
4	Coosa and Chattooga R. R. Co	37.5
5	Mobile and Girard R. R. Co	169.6
6	Alabama and Tennessee Rivers R. R. Co	67.35
7	Marquette and Ontonagon R. R. Co	46
8	Ontonagon and State Line R. R. Co	75
9	Amboy, Lansing and Traverse Bay R. R. Co. and other railroad companies now claiming subdivisions of the grant made to that road	153.27
10	Port Huron and Milwaukee R. R. Co	60
11	La Crosse and Milwaukee R. R. Co	39
12	St. Croix and Lake Superior R. R. Co. and other railroad companies now claiming subdivisions of the grant made to that road	243.9
13	Vicksburg, Shreveport and Texas R. R. Co	96
14	Gulf and Ship Island R. R. Co	170
15	Minnesota and Pacific R. R. Co. and subsequent owners of subdivisions of the grant made to that company	237.61
16	Southern Minnesota and Minnesota Valley R. R. Co	25
17	Southern Minnesota R. R. Co., under grant of March 3, 1857	58.5
18	Portage, Winnebago and Superior R. R. Co	93
19	Sioux City and Saint Paul R. R. Co	26.91
20	Northern Pacific R. R. Co	1,732.31
21	Southern Minnesota R. R. Co., under grant of July 4, 1866	130.02
22	Hastings, Minnesota and Red River of the North R. R. Co	128.1
23	Oregon Central R. R. Co., under grant of July 25, 1866	163
24	California and Oregon R. R. Co	152
25	Southern Pacific R. R. Co	324
	Total	4,598.22

The following list will show the estimated area forfeited by the act of September 29, 1890, and that which would be forfeited by this bill:

Name of railroad.	Estimated number of acres forfeited.	
	By act of Sept. 29, 1890.	By House bill 8390.
Gulf and Ship Island	652,800	652,800
Coosa and Tennessee	140,160	140,160
Coosa and Chattooga	144,000	144,000
Mobile and Girard	536,064	651,264
Selma, Rome and Dalton*	89,932	258,624
Atlantic, Gulf and West India Transit	76,800	676,000
Pensacola and Georgia	None	679,680
Vicksburg, Shreveport and Texas	None	364,800
Jackson, Lansing and Saginaw†	None	176,256
Marquette, Houghton and Ontonagon	294,400	294,400
Ontonagon and Brule River	211,200	288,000
La Crosse and Milwaukee	None	195,724
Chicago, St. Paul, Minneapolis and Omaha	None	1,446,400
Wisconsin Central	406,880	464,480
St. Vincent extension, St. Paul and Pacific (now St. Paul, Minneapolis and Manitoba)	None	1,113,600
Western Railroad	None	243,712
Southern Minnesota Railway extension	None	832,115
Hastings and Dakota	None	819,840
Northern Pacific	2,000,000	36,907,741
California and Oregon	None	1,740,800
Oregon and California	None	2,086,400
Southern Pacific	1,075,200	4,147,200
Total	5,627,436	54,323,996

The following is a list of forfeitures declared during the Forty-eighth and Forty-ninth Congresses:

Congressional action on land-grant forfeiture bills.

Name of railroad.	Congress.	Acres.
Oregon Central	Forty-eighth..	810, 880
Texas Pacific	do	18, 500, 000
Iron Mountain of Missouri	do	300, 000
Atlantic and Pacific	Forty-ninth...	23, 871, 360
Tuscaloosa and Mobile	do	7, 000, 000
Mobile and New Orleans		
Elyton and Beard's Bluff		
Memphis and Charleston		
Savannah and Albany		
New Orleans and State Line		
Iron Mountain of Arkansas		
		50, 482, 240

*Estimated.

○

HEIRS OF MAURICE GRIVOT.

MAY 19, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ENLOE, from the Committee on War Claims, submitted the following

REPORT.

[To accompany S. 150.]

The Committee on War Claims, to whom was referred the bill (S. 150) for the relief of the heirs of Maurice Grivot, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Claims of the present Congress, a copy of which is hereto appended as a part of this report.

Your committee concur in the conclusions stated in that report and recommend the passage of the bill.

[Senate Report No. 430, Fifty-second Congress, first session.]

The Committee on Claims has had under consideration a bill (S. 150) for the relief of the heirs of Maurice Grivot and find that it is identical with a bill for the same purpose (S. 990) which was before the committee during the Fifty-first Congress. The committee made a favorable report thereon, and their action was confirmed by the passage of the bill in the Senate. The bill then went to the House, where no final action was taken.

The committee have reached the same conclusion as before, and submit the former report as a part of the present one, and recommend that the bill do pass.

[Senate Report No. 87, Fifty-first Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 990) for the relief of the heirs of Maurice Grivot, have examined the same and report as follows:

The heirs of Maurice Grivot have presented their claim to Congress for relief on several former occasions. It was before this committee during the Forty-seventh Congress and each Congress since. One item in it was disallowed and is not included in the bill now under consideration. The other was favorably considered by the committee, and in the Forty-eighth and Fiftieth Congresses a bill substantially the same as that which we are now acting upon was passed by the Senate.

The late Maurice Grivot was, in 1863, a depositor in the branch of the Louisiana State Bank, then at New Orleans. On the 17th day of August of that year there stood to his credit \$962.85 in par or current funds besides some Confederate funds or money.

On the 17th of August, 1863, an order (Special Order No. 202, Department of the Gulf) was issued by command of Maj. Gen. Banks, then in command of the department, requiring the several banks and banking associations of New Orleans to pay over, without delay, to the chief quartermaster of the Army, or to such officer of his

department as he might designate, all money in their possession belonging to or standing upon their books to the credit of any person registered as an enemy of the United States, or engaged in any manner in the military, naval, or civil service of the "so-called Confederate States, or who should have been, or might hereafter be, convicted of rendering any aid or comfort to the enemies of the United States." The order declared that those funds would "be held and accounted for by the Quartermaster's department, subject to the future adjudication of the Government of the United States."

Under and in obedience to this order, the branch of the Louisiana State Bank paid over to the acting quartermaster the balance standing on its books to the credit of Grivot, who came within the terms of the order. February 26, 1867, proceedings were instituted against the bank by Maurice Grivot to recover the money thus paid under the military order by the bank to the acting quartermaster. The case terminated in the Supreme Court against him, on the ground that the military order justified the bank in making the payment. The case is reported in 24 Louisiana Annual Reports, page 265. The original claimant died March 5, 1875, leaving as his sole heir his daughter, Laura Grivot. She died a few years afterwards, but the date of her death does not appear in the record.

April 30, 1879, Marie Emma Nicholas and Anne Elodie Jacques were recognized as the sole heirs of Laura Grivot, and through her of Maurice Grivot, and in a proceeding under the laws of Louisiana in the second district court for the parish of Orleans, it was ordered that they be put into possession of the succession of Laura Grivot according to law, and they afterwards presented the claim descending to them from their ancestor to the Congress.

The order of the commanding general directed the fund "to be held and accounted for by the quartermaster's department, subject to the future adjudication of the Government of the United States." And the chief quartermaster in his order designating an acting quartermaster as the officer to receive the funds included in the terms of the general order, directed him "to hold this money and account for it to the United States Treasury."

The following extract from a letter from Secretary Folger to a former member of this committee shows that the Government received the benefit of the money:

TREASURY DEPARTMENT, *February 10, 1882.*

SIR: I have received your letter of the 28th ultimo, transmitting bill (S. 392) "for the relief of the heirs of Maurice Grivot," and making certain inquiries. Upon examination of the records of this Department it appears that in the month of August, 1863, Capt. J. W. McClure, A. Q. M., seized from the Louisiana State Bank, of New Orleans, under General Order No. 202, the sum of \$28,293.11, in par funds, and \$8,654.01 in Confederate funds. In the receipt given by him to the bank—a copy of which is on file with his accounts—are set forth the names of the depositors, and the respective amounts standing on the books of the bank to their credit. The par funds are credited to certain depositors, among them M. Grivot, who is credited with \$962.85. The Confederate funds are also credited to certain depositors, including \$611.94 to M. Grivot.

The par funds, with like funds received from other banks, amounting in the aggregate to \$44,692.43, were taken up by Captain McClure in his account-current for August, 1863, and expended by him for the ordinary purposes of the quartermaster's department, and have not been covered into the Treasury.

* * * * *

CHAS. J. FOLGER,
Secretary.

Hon. ANGUS CAMERON,
Chairman Committee on Claims, U. S. Senate.

The present bill proposes to return to the heirs of said Grivot the sum of \$962.85, being the amount received by the Government from the bank in par or current funds, no demand being made for the amount turned over by the bank in Confederate funds. The only question raised by the facts and circumstances above detailed is whether there is any duty or obligation, legal or equitable, on the part of the Government to return or pay over to the heirs of Grivot the amount of *par funds* belonging to him which were received from the bank.

The proceedings against the bank instituted by their ancestor having failed, the claimants can look only to the Government for reimbursement, and the merit of their claim depends upon the validity of said Order No. 202, under which the representatives of the Government took the money. The purpose of the order was not to supply military wants and necessities, but simply to impound and confiscate the moneys of persons registered as enemies of the United States. The Supreme Court has passed upon this question in the case of the *Planters' Bank vs. Union Bank* (16 Wal-

lace, 494), and the following extract from this case shows the reasoning upon which the court rested its judgment.

"The validity of the order is, therefore, the first thing to be considered. It was made, as we have seen, on the 17th of August, 1863. Then the city of New Orleans was in quiet possession of the United States forces. It had been captured more than fifteen months before that time, and undisturbed possession was maintained ever after its capture. Hence the order was no attempt to seize property '*flagrante bello*,' nor was it a seizure for immediate use of the Army. It was simply an attempt to confiscate private property, which, though it may be subjected to confiscation by legislative authority, is, according to the modern law of nations, exempt from capture as booty of war. Still, as the war had not ceased, though it was not flgrant in the district, and as General Banks was in command of the district, it must be conceded that he had power to do all that the laws of war permitted, except so far as he was restrained by the pledged faith of the Government or by the effect of Congressional legislation. A pledge, however, had been given that rights of property should be respected. When the city was surrendered to the army under General Butler, a proclamation was issued dated May 1, 1862, one clause of which was as follows: '*All the rights of property of whatever kind will be held inviolate*, subject only to the laws of the United States.' This, as was remarked in the case of the *Venice* (2 Wallace, 258), 'only reiterated the rules established by the legislative and executive action of the National Government in respect to the portions of the States in insurrection occupied and controlled by the troops of the Union.'

"That action, it was said, indicated the policy of the Government to be, not to regard districts occupied and controlled by national troops as in actual insurrection, or their inhabitants as subject in most respects to treatment as enemies. Substantial, complete, and permanent military occupation and control was held to draw after it the full measure of protection to persons and property consistent with a necessary subjection to military government. We do not assert that anything in General Butler's proclamation exempted property within the occupied district from liability to confiscation as enemy's property, if in truth it was such. All that is now said is, that after that proclamation private property in the district was not subject to military seizure as booty of war. But admitting, as we do, that private property remained subject to confiscation, and also that the proclamation applied exclusively to inhabitants of the district, it is undeniable that confiscation was possible only to the extent and in the manner provided by the acts of Congress. These acts were passed on the 6th August, 1861, and on the 17th July, 1862.

"No others authorized the confiscation of private property, and they prescribed the manner in which alone confiscation could be made. They designated Government agents for seizing enemies' property, and they directed the mode of procedure for its condemnation in the courts. The system devised was necessarily exclusive. No authority was given to a military commandant, as such, to effect any confiscation.

* * * It is therefore of little importance to inquire what, under the general laws of war, are the rights of a conqueror, for during the recent civil war the Government of the United States asserted no general right in virtue of conquest to compel the payment of private debts to itself. On the contrary, it was impliedly disclaimed, except so far as the acts of 1861 and 1862 asserted it. These enactments declaring that private property belonging to certain classes of persons might be confiscated, in the manner particularly described, are themselves expressive of an intent that the rights of conquest should not be exercised against private property except in the cases mentioned and in *the manner pointed out*. * * * It follows, then, that the order of General Banks was one which he had no authority to make, and that his direction to the bank to pay to the quartermaster of the Army the debt due the Planters' Bank was wholly invalid."

The committee has followed substantially the reasoning of the former reports and close with the language and conclusion of the report made in the Forty-seventh Congress (No. 789), prepared by Mr. Jackson, of Tennessee, which was again made by him in the Forty-ninth Congress (No. 68):

"The Supreme Court having thus decided that the attempt of the commanding general of the department to enforce by military order the confiscation acts of Congress against the property and effects of rebellious citizens of the United States was without authority and invalid, and it further appearing that there has never been any judicial procedure for the condemnation of the funds thus seized as directed and required by the confiscation acts of 1861 and 1862, so as to divest and defeat the private rights and interests of the owner, it follows that the United States acquired no valid title under that seizure to the money of Grivot, who before his death received full and complete amnesty from the Government, which removed the only ground on which confiscation or an actual divestiture of his interests could be predicated. The possession obtained by the Government under the unauthorized order of its commanding officer conferred upon it *no higher or stronger right* to this fund than that acquired by a seizure under the captured and abandoned property acts.

“The Government simply got possession of the fund, with the right to have it condemned and confiscated in the *exclusive* mode and manner directed and prescribed by the confiscation acts of 1861 and 1862, but before exercising this right, which was necessary to a valid divestiture of the owner's title and to perfect its own, the Government confers upon the owner complete amnesty for all the past offenses which entitled it to confiscate the fund. This grant of amnesty was a voluntary surrender and abandonment by the United States of its right to complete and perfect that judicial condemnation of the fund which was necessary to defeat the owner's interest. Having been pardoned before any legal and valid divestiture of his rights was had, the acts of Congress and the decisions of the Supreme Court entitled the owner or his legal representatives to the full benefit of a restoration of his property as completely as though no seizure had ever been made or military confiscation attempted.

“Under the authority of *Armstrong vs. United States* (13 Wallace, 154) and *Pargoud vs. United States* (13 Wallace, 156) the claimants in the present case, if they could sue the Government, would be entitled to recover this fund. Will Congress deny to them, simply because it has the power to withhold, what the courts of the United States would allow as a valid right? To do so would be the exercise of a punitive power, destructive of the rights which the clemency of the executive department has lawfully restored. It would present a singular anomaly for Congress to deny rights recognized by the judicial and executive departments of the Government.

“Your committee, therefore, consider that the money belonging to Grivot, to the extent of \$962.85, received, as aforesaid, by the Government in par funds, should be restored to his heirs at law, and they accordingly recommend the passage of the bill.”



LOUIS V. PORCHE AND OTHERS.

MAY 19, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHELL, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 236.]

The Committee on War Claims, to whom was referred the bills (H. R. 7175, 7176, 7177, 7178, 7663, and 7740) for the relief of Louis V. Porche, Pierre Garrot, John R. Elliott, Joseph Knight, Omer Baudry, and David and Barbette Carl, have had the same under consideration, and beg leave to report as follows:

Your committee are of the opinion that these claims should be referred to the Court of Claims for findings of fact, and report herewith a resolution to that effect and recommend its adoption.



FRANK S. SOWERS.

MAY 19, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHELL, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 3154.]

The Committee on War Claims, to whom was referred the bill (H. R. 3154) for the relief of Frank S. Sowers, submit the following report:

Your committee, having duly considered said bill, adopt the report made by the Committee on War Claims of the Fifty-first Congress, first session, which is as follows:

The claim in this case is for \$269.60, and the ground for the claim is stated in the bill. The facts show that the service was rendered by the claimant under instructions from Col. Zahm, of the Third Ohio Volunteer Cavalry, and approved by Gen. Buell. The claimant incurred a personal expense of the amount, which has never been repaid him.

The committee recommend the passage of the bill.

○

METHODIST CHURCH OF MOREHEAD CITY, N. C.

MAY 19, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHELL, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 5885.]

The Committee on War Claims, to whom was referred the bill (H. R. 5885) for the relief of the Methodist Church of Morehead City, N. C., submit the following report:

The committee have given the claim careful consideration, and find that it is clearly established by evidence that the Methodist Church of Morehead City, of Carteret County, N. C., was occupied by United States troops during the late war, first as quarters for troops, then as a bakery, and was used as such until some time in 1863, at which time the church building was torn down by United States troops and the material used in erecting a larger building for bakery purposes, and used as such until the close of the war, when it was sold with other Government property.

The evidence shows that the building was worth \$1,000 at the time it was taken by United States troops, and your committee are of the opinion that the claim should be paid.

Your committee therefore report the bill back and recommend that it do pass.

○

JOSIAH L. BELL.

MAY 19, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHELL, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 239.]

The Committee on War Claims, to whom was referred the bill (H. R. 6080) for the relief of Josiah L. Bell, submit the following report:

The claimant alleges a claim against the United States for services rendered and for supplies furnished to the United States Army, 1863 and 1864. Claim stated at \$1,105.

It seems to your committee that an investigation by the Court of Claims is a matter of necessity before intelligent action can be had upon the claim, and your committee report herewith a resolution referring the claim to the Court of Claims for a finding of facts under the provisions of the act of March 3, 1887, known as the "Tucker act," and recommend its passage.

O

JOHN J. TOLSON.

MAY 19, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHELL, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. No. 237.]

The Committee on War Claims, to whom was referred the bill (H. R. 5586) for the relief of John J. Tolson, administrator of Kilby Tolson, submit the following report:

This is a claim for naval stores alleged to have been sold by the decedent to the United States Government in 1863. Claim stated at \$984.

It seems to your committee that an investigation by the Court of Claims is a matter of necessity before intelligent action can be had upon the claim, and your committee report herewith a resolution referring the claim to the Court of Claims under the provisions of the act of March 3, 1887, commonly known as the "Tucker act," and recommend its passage.



L. T. OGLESBY.

MAY 19, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHELL, from the Committee on War Claims, submitted the following

REPORT:

To accompany Mis. Doc. 238.]

The Committee on War Claims, to whom was referred the bill (H. R. 5587) for the relief of L. T. Oglesby, submit the following report:

This is a claim for naval stores alleged to have been sold by the claimant to the agents of the United States Government in 1863. Claim stated at \$1,098.66.

It seems to your committee that an investigation by the Court of Claims is a matter of necessity before intelligent action can be had upon this case, and your committee report herewith a resolution referring the claim to the Court of Claims under the provisions of the act approved March 3, 1887, commonly known as the "Tucker act," and recommend its passage.

O

MARRILLA PARSONS.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUTLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany S. 1474.]

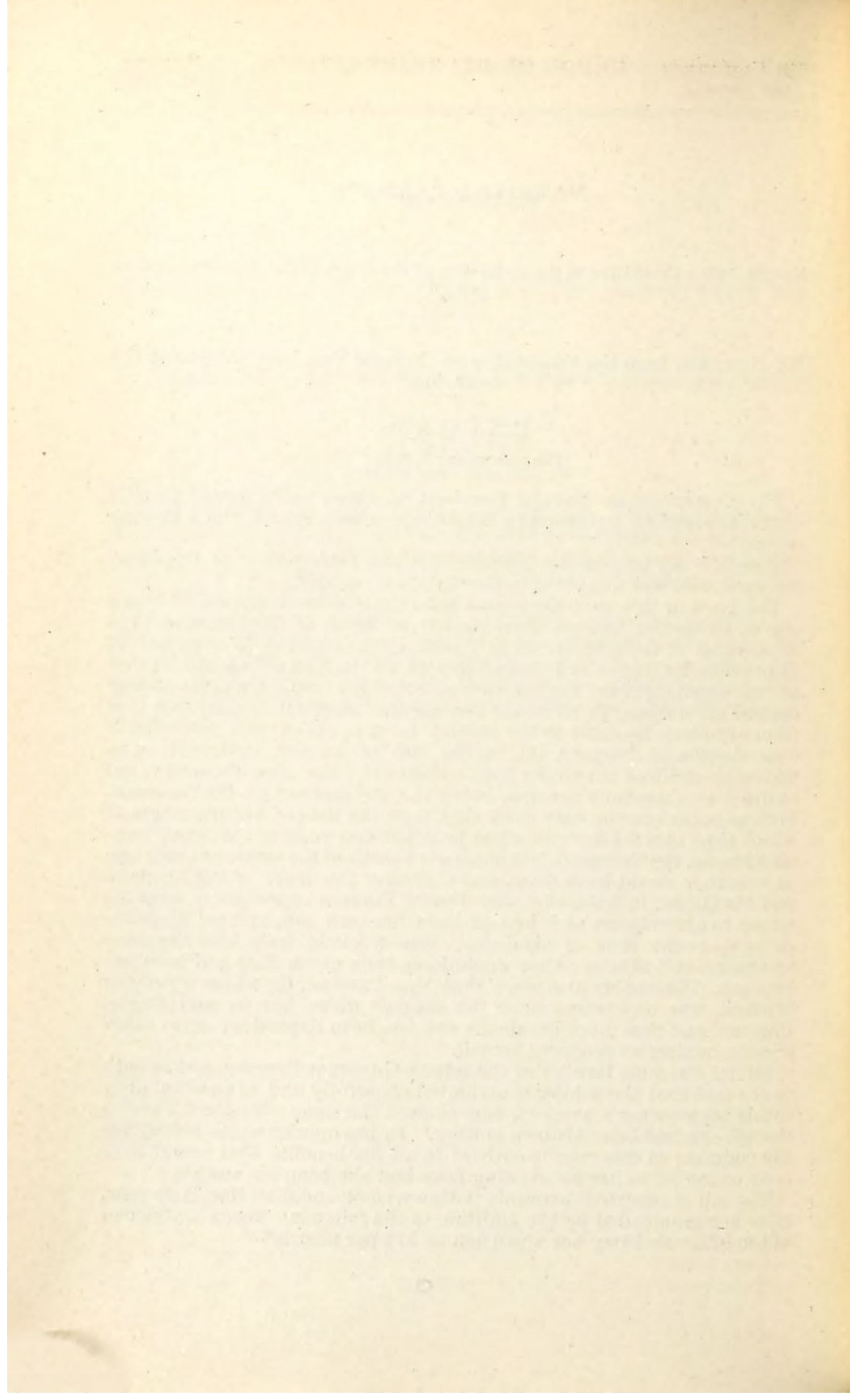
The Committee on Invalid Pensions, to whom was referred the bill (S. 1474) granting a pension to Marrilla Parsons, submit the following report:

This is a bill to pension Marrilla Parsons, stepmother of Daniel P. Parsons, who was a captain in the Missouri cavalry.

The facts in this case show that Marrilla Parsons is the widow of the late ex-Governor Andrew Parsons, of the State of Michigan, and the stepmother of the late Daniel P. Parsons, who enlisted in Company B, Thirteenth Regiment of Illinois Infantry, on the 24th of May, 1861; that he was discharged on the 1st day of February, 1863, for promotion as captain of Company D, Eleventh Regiment of Missouri Cavalry, and that from exposure incident to his service he was taken sick and died of consumption at Sterling, Ill., on the 13th of August, 1864, leaving no widow or children surviving him. Under the law Mrs. Parsons is not entitled to a mother's pension, being the stepmother of the deceased, but the papers in the case show that from the time of her marriage, at which time this soldier was a boy less than ten years of age, until Daniel Parsons, the deceased, left home she exercised the same care over him as a mother would have done, and that after the death of her husband and his father, in 1854, the said Daniel Parsons contributed from his wages to her support as if he had been her own son, and continued to do so up to the time of his death. She received from him the same treatment and affection that would have been given if he had been her own son. The papers also show that Mrs. Parsons, for whom a pension is asked, was dependent upon the support given her by said Daniel Parsons, and that since his death she has been dependent upon other friends, having no property herself.

Daniel Parsons, brother of the late ex-Governor Parsons, makes oath to the fact that the soldier contributed cheerfully and as an act of duty to his stepmother's support, and showed the same affection for her as though she had been his own mother. In the opinion of the committee the claimant in this case is entitled to all the benefits that would have been conceded to her by existing laws had she been his mother.

The bill is reported favorably with a recommendation that it do pass, after being amended by the addition of the following words at the end of the bill, "and pay her a pension at \$12 per month."



CAPT. CERAN ST. VRAIN'S COMPANY NEW MEXICO
MOUNTED VOLUNTEERS.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. JOSEPH, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 4812.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4812) for the relief of Capt. Ceran St. Vrain's Company of New Mexico Mounted Volunteers, having had the same under consideration, report as follows:

The records of the War Department show that this company was organized by Capt. Ceran St. Vrain, of Sante Fe, N. Mex., on January 23, 1847, and remained in service until February 20, 1847. It was organized under the authority of the colonel commanding the United States forces in New Mexico. At this time Gen. Kearney had taken possession of New Mexico in the name of the United States, but an insurrection against the authority of the United States occurred in the Taos district. The governor of the Territory and a large number of the inhabitants of the town of Taos who sympathized with the United States were killed. The colonel then in command of the army at Santa Fe proceeded with all his available men to suppress this insurrection. As an aid in this object, he authorized the organization of a company of volunteers by Capt. Ceran St. Vrain, and they performed valuable service in suppressing the outbreak. They were never recognized by the War Department as in the United States service, on account of want of authority in the then commanding colonel to order their organization and muster. The necessity for their organization existed and he could not have obtained authority from the War Department in time to make them available in the suppression of said insurrection.

The meritorious character of their services is fully set forth in the annexed report of the War Department. As they rendered service of great value under the only possible authority they should be recognized as in the United States service. The Secretary of War recommends the granting of relief. The report of the War Department is appended with a roster of the company.

The committee therefore recommend the passage of the bill with the following amendments:

After the word "that," in line 3, insert "the muster by the colonel then commanding the army in New Mexico of," and in lines 9, 10, and 11, to strike out beginning with the words "shall be," in line 9, down to and including "and pension," in line 11, and to insert in lieu thereof the words "is hereby ratified and made legal as of that date, and the said company be deemed and considered."

2 CAPT. CERAN ST. VRAIN'S COMPANY OF MOUNTED VOLUNTEERS.

War Department report in the case of Capt. Ceran St. Vrain's company of New Mexico Mounted Volunteers.

RECORD AND PENSION DIVISION,
March 15, 1892.

There are no official records of this company on file in this Department.

The services of the company are found mentioned in a report of Col. Sterling Price, Second Missouri Volunteers, commanding United States forces in New Mexico, and letter of Rufus Ingalls, second lieutenant, First Dragoons, extracts of which are as follows:

HEADQUARTERS ARMY IN NEW MEXICO,
Santa Fe, February 15, 1847.

SIR: I have the honor to submit to you a short account of the revolution in this Territory, and a detailed report of the operations of the forces under my command, and consequent upon the rebellion.

* * * * *
On the 23d of January I marched from this place at the head of * * * and a company of Santa Fe volunteers commanded by Capt. St. Vrain. * * *

On the 24th of January, at half-past 1 p. m., our advance (Capt. St. Vrain's company) discovered the enemy in considerable force near the town of Canada. * * *

The enemy discovering the wagons to be more than a mile in the rear, sent a large party to cut them off; and it became necessary to detach Capt. St. Vrain's company for their protection.

This service was rendered in the most satisfactory manner. So soon as the wagon train had been brought up, I ordered Capt. Angney to charge with his battalion of infantry, and dislodge the enemy from the house opposite the right flank, and from which a warm fire was being poured on us; this was done in the most gallant manner; a charge was then ordered to be made upon all the points occupied by the enemy in any force. Capt. Angney with his command, supported by Lieut. White's company, charged up one hill, while Capt. St. Vrain's company turned the same in order to cut off the enemy when in retreat. * * *

On the 29th I marched to La Ioya, where I learned that a party of sixty or eighty of the enemy had posted themselves on the steep slopes of the mountains which rise on each side of the cañon or gorge which leads to Embudo. Finding the road by Embudo impracticable for artillery or wagons, I detached Capt. Burgwin in that direction with his own company of dragoons and the companies commanded by Capt. St. Vrain and Lieut. White. This detachment comprised one hundred and eighty rank and file.

By my permission, Adjutant R. Walker, Second Regiment Missouri Mounted Volunteers, accompanied Capt. Burgwin. Lieut. Wilson, First Dragoons, also volunteered his services as a private in Capt. St. Vrain's company.

Capt. Burgwin, pushing forward, discovered the enemy, to the number of between six and seven hundred, posted on the sides of the mountains, just where the gorge becomes so contracted as scarcely to admit of the passage of three men marching abreast.

The rapid slopes of the mountains rendered the enemy's position very strong; and its strength was increased by the dense masses of cedar and large fragments of rock which everywhere offered them shelter.

The action was commenced by Capt. St. Vrain, who, dismounting his men, ascended the mountain on the left, doing much execution. Flanking parties were thrown out on either side commanded, respectively, by Lieut. White, Second Regiment Missouri Mounted Volunteers, and by Lieuts. McIlvane and Taylor, First Dragoons.

These parties ascended the hills rapidly, and the enemy soon began to retire in the direction of Embudo, bounding along the steep and rugged sides of the mountains with a speed that defied pursuit. * * *

Capt. Burgwin marched through the defile, and debouching into the open valley in which Embudo is situated recalled the flanking parties, and entered that town without opposition, several persons meeting him with a white flag.

Our loss in this action was one man killed and one severely wounded, both belonging to Capt. St. Vrain's company. The loss of the enemy was about twenty killed and sixty wounded.

Thus ended the battle of the Pass of Embudo. * * *

On the 31st I reached Trampas, and, being joined by Capt. Burgwin, marched on to Chamisal with the whole command. On the 1st of February we reached summit of the Taos mountain, which was covered with snow to the depth of 2 feet; and on the 2d quartered at a small village called Rio Chicito, in the entrance of the valley of Taos.

The marches of the 1st and 2d were through deep snow. Many of the men were frost-bitten, and all were very much jaded with the exertions necessary to travel over unbeaten road, being marched in front of the artillery and wagons in order to break a road through the snow. The constancy and patience with which the troops bore these hardships deserve all commendation, and can not be excelled by the most veteran soldiers. On the 3d I marched through Don Fernando de Taos, and finding that the enemy had fortified themselves in the Pueblo de Taos, proceeded to that place. I found it a place of great strength, being surrounded by adobe walls and strong pickets. Within the inclosure and near the northern and southern walls arose two large buildings of irregular pyramidal form to the height of seven or eight stories. Each of these buildings was capable of sheltering five or six hundred men. Besides these there were many smaller buildings, and the large church of the town was situated in the northwestern angle, a small passage being left between it and the outer wall. The exterior wall and all the inclosed buildings were pierced for rifles. The town was admirably calculated for defense, every point of the exterior walls and pickets being flanked by some projecting building, as will be seen from the inclosed drawing.

After having reconnoitered the town, I selected the western flank of the church as the point of attack, and about 2 o'clock p. m. Lieut. Dyer was ordered to open his battery at the distance of about 150 yards. A fire was kept up by the 6-pounder and the howitzers for about two hours and a half, when, as the ammunition wagon had not yet come up, and the troops were suffering from cold and fatigue, I returned to Don Fernando. Early on the morning of the 4th I again advanced upon Pueblo. Posting the dragoons under Capt. Burgwin about 260 yards from the western flank of the church, I ordered the mounted men under Capt. St. Vrain and Slack to a position on the opposite side of the town, whence they could discover and intercept any fugitives who might attempt to escape toward the mountains or in the direction of Don Fernando.

The residue of the troops took ground about 300 yards from the northern wall. Here, too, Lieut. Dyer established himself with the 6-pounder and two howitzers, while Lieut. Hassandaubel, of Maj. Clark's battalion light artillery, remained with Capt. Burgwin, in command of two howitzers. By this arrangement a cross-fire was obtained, sweeping the front and eastern flank of the church.

All these arrangements having been made, the batteries opened upon the town at 9 o'clock A. M. At 11 o'clock, finding it impossible to breach the walls of the church with the 6-pounder and howitzers, I determined to storm that building. At a signal, Capt. Burgwin, at the head of his own company and that of Capt. McMillan's, charged the western flank of the church, while Capt. Angney, Infantry Battalion, and Capt. Barbee and Lieut. Boon, Second Regiment Missouri Mounted Volunteers, charged the northern wall. As soon as the troops above mentioned had established themselves under the western wall of the church, axes were used in the attempt to breach it; and, a temporary ladder having been made, the roof was fired. About this time Capt. Burgwin, at the head of a small party, left the cover afforded by the flank of the church and, penetrating into the corral in front of that building, endeavored to force the door. In this exposed situation, Capt. Burgwin received a severe wound which deprived me of his valuable services, and of which he died on the 7th instant. Lieuts. McIlvaine, First Dragoons, and Royall and Lackland, Second Regiment Mounted Volunteers, accompanied Capt. Burgwin into the corral; but the attempt on the church door proved fruitless and they were compelled to retire behind the wall.

In the meantime small holes had been cut into the western wall and shells were thrown in by hand, doing good execution. The 6-pounder was now brought around by Lieut. Wilson, who, at the distance of 200 yards, poured a heavy fire of grape into the town. The enemy during all this time kept up a destructive fire upon our troops. About half-past 3 o'clock, the 6-pounder was run up within 60 yards of the church, and after ten rounds, one of the holes which had been cut with the axes widened into a practicable breach. The gun was now run up within 10 yards of the wall. A shell was thrown in, three rounds of grape were poured into the breach. The storming party, among whom were Lieut. Dyer, of the Ordnance, and Lieuts. Wilson and Taylor, First Dragoons, entered and took possession of the church without opposition. The interior was filled with dense smoke, but for which circumstances our storming party would have suffered great loss. A few of the enemy were seen in the gallery where an open door admitted the air, but they retired without firing a gun.

The troops left to support the battery on the north were now ordered to charge on that side. The enemy abandoned the western portion of the town. Many took refuge in the large houses on the east, while others endeavored to escape towards the mountains. These latter were pursued by the mounted men under Capt. Slack and St. Vrain, who killed fifty-one of them, only two or three escaping. It was now night, and our troops were quietly quartered in the houses which the enemy had abandoned. On the next morning the enemy sued for peace, and thinking the

4 CAPT. CERAN ST. VRAIN'S COMPANY OF MOUNTED VOLUNTEERS.

severe loss they had sustained would prove a salutary lesson I granted their supplication, on the condition that they should deliver up to me Tomas, one of their principal men, who had instigated and been actively engaged in the murder of Governor Bent and others. The number of the enemy at the battle of Pueblo de Taos was between six and seven hundred. Of these about one hundred and fifty were killed; wounded, not known. Our own loss was seven killed and forty-five wounded. Many of the wounded have since died.

* * * * *

In the battles of Canada, Embudo, and Pueblo de Taos the officers and men behaved admirably. Where all conducted themselves gallantly I consider it improper to distinguish individuals, as such discrimination might operate prejudicially against the just claims of others.

I have the honor to be, very respectfully, your obedient servant,

STERLING PRICE,

Colonel, Commanding the Army in New Mexico.

The ADJUTANT-GENERAL OF THE ARMY,

Washington, D. C.

DON FERNANDO DE TAOS, N. MEX., *February 16, 1847.*

COLONEL: I have the honor herewith to transmit the monthly return of the late Capt. I. H. K. Burgwin's company (G, First Dragoons) for the month of January, 1847.

I have signed the return myself, and in order to explain it beg leave to submit the following statement:

On 23d January Capt. Burgwin marched with his company from Albuquerque, a town on the Rio Grande, 70 miles distant from Santa Fe, to join Col. Price. He reached the latter place on the 26th January. On 28th he joined Col. Price with his company at a town on the Rio Arriba, 35 miles from Santa Fe, in the direction of Taos.

On the 29th he was sent forward in command of a detachment made up of his own company and about 100 volunteers to drive the enemy from a stronghold in a mountain pass near a town called Embudo. Early in the day Capt. Burgwin found the enemy posted on the heights, in the ravines, and behind all trees and rocks where shelter could be found. The enemy numbered about 500, consisting of Mexicans and Pueblo Indians. Capt. Burgwin at once engaged the enemy by ordering Capt. St. Vrain's company of citizens and mountain men to dismount and skirmish on the left of the road. At the same time I was ordered to throw out the dragoons on the right and left. The action lasted about two and one-half hours. The enemy was put to flight with considerable loss, and was pursued more than 2 miles from hill to hill, through the ravines, and was completely routed and driven beyond the town of Embudo, of which Capt. Burgwin took possession and in which his command camped on the night of the 29th. In this engagement Capt. Burgwin lost 1 man killed and 1 wounded. The enemy lost, so far as could be ascertained, about 20 killed and 60 wounded.

* * * * *

I am, sir, very respectfully, your most obedient servant,

RUFUS INGALLS,

Second Lieutenant, First Dragoons.

Lieut. Col. C. WHARTON,

Commanding First Dragoons, Fort Leavenworth, Mo.

A true copy.

H. W. STANTON,

Second Lieutenant, First Dragoons, Post Adjutant.

No further record of service has been found.

The Paymaster-General and the Second Auditor have reported no record of payment to the company.

The subject of the payment of the company has been several times before Congress, but without favorable results.

In January, 1887, Hon. Antonio Joseph, Delegate to Congress from the Territory of New Mexico, left in the Adjutant-General's Office two copies of rolls which purport to be certified copies of the original muster rolls of St. Vrain's company; and later he referred to the same office statements of various persons (including an affidavit of Gen. Rufus Ingalls) relative to the service rendered by the company, for the purpose of establishing a claim for recognition.

The following is a copy of Gen. Ingalls's affidavit:

NEW YORK, *December 27, 1887.*

HENRY J. CUNIFFE, Esq.,
Las Cruces, N. Mex.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th instant, with inclosures, in relation to St. Vrain's Company of Independent Volunteers that served during the Mexican war. You ask me to see if I can identify that company. I can answer unhesitatingly that I can make oath, or certify on honor as an officer, to its identity and actual service, and am ready and willing to do so. Gen. Kearney, after entering New Mexico with his army in 1846, caused the inhabitants to take the oath of allegiance, though the country formed a portion of Mexico until the treaty of 1848. In January, 1847, a revolution or insurrection broke out suddenly in the Taos district. Most of the civil officers, Gov. Bent, etc., were killed, and the insurgents marched on to Santa Fe with a large mixed force of Mexicans and Pueblo Indians.

Gen. Sterling Price, who was in command at Santa Fe, did not await an attack on the city, but concentrated all the forces under him and marched out to meet them. He mustered St. Vrain's company into service. It was mostly composed of "mountain men," as they were called, men of experience and great daring. They furnished their own horses, equipments, and arms, and were enrolled (no doubt) on the 23rd of January, 1847. They made very perfect irregular cavalry. Price met the insurgents 25 miles from Santa Fe, at Canada, and put them to rout. St. Vrain's company performed gallant service in this engagement. They were pursued through the cañon of Embudo by a detachment under Capt. Burgwin, of the First U. S. Dragoons, made up of his company, G, First Dragoons, Capt. Angney's battalion of Missouri Volunteer Infantry, and Capt. St. Vrain's "mountain men." The conflict in the defile was short, but decisive, and the victory complete. The company of St. Vrain led the charge. I saw Private Papin of that company shot through the body, dead on the field. The detachment rejoined the main body and pursued the insurgents over the Taos Mountains to their last stand in the Pueblo de Taos, where they were fought on the 3rd and 4th of February, 1847.

St. Vrain's company was posted in the gorge of the mountain in rear of the Pueblos, and when the insurgents were driven out by Price's troops by a charge in front this company cut down and killed over fifty of the flying enemy. This ended the conflict. During the night the survivors gathered in the plaza and surrendered at daylight next morning. Thus the campaign was closed, and Capt. St. Vrain marched his company back to Santa Fe, where it was mustered out. I was personally acquainted with St. Vrain, Folger, and others.

During the period covered by the foregoing, I was a second lieutenant, First U. S. Dragoons.

The inclosures are herewith returned.

Very respectfully,

RUFUS INGALLS,
Brevet Major-General, U. S. Army.

Personally appeared, this 25th day of February, A. D. 1887, before me, a notary public, Gen. Rufus Ingalls, U. S. Army, to me personally known, and made oath that the foregoing statements as to the services of Capt. Ceran St. Vrain's company, Mounted Volunteers, are correct and true.

JOHN J. MCAULIFFE,
Notary Public, New York County, No. 20.

No action appears to have been taken on the papers above referred to.

On February 8, 1891, Hon. Antonio Joseph submitted to this Department a letter from Mr. William B. Rohmann, of Mora, N. Mex., relative to the pension claim of Mrs. Maria Ann Rohmann—whose husband had been a member of St. Vrain's company—which had been rejected on the ground that the company to which the soldier belonged is not recognized by the War Department as having been mustered into the United States service. The case was submitted by Mr. Joseph for decision as to whether (1st) the company can be recognized by this Department as having been properly in the military service of the United States, and (2d), if so recognized, whether the accompanying copies of rolls can be accepted by the Department and placed on the files as the official muster rolls of the company.

February 28, 1891, the papers in the case were referred to the Acting Judge Advocate-General, "with request for his opinion as to the action proper to be taken in this case."

6 CAPT. CERAN ST. VRAIN'S COMPANY OF MOUNTED VOLUNTEERS.

They were returned May 14, 1891, indorsed by that officer as follows:

"It not being shown that there was any authority for enlisting and mustering the within company (Capt. St. Vrain's company of New Mexico Mounted Volunteers, Mexican war) into the service at the time and by the officers mentioned within, I do not think the evidence herewith sufficient to entitle the men to recognition by this Department as having been properly in the military service of the United States.

"The accompanying copies of rolls purport to be copies of originals on file at the capital of New Mexico. When a company of volunteers is mustered in it is proper to make out all rolls in duplicate and file one with the proper officer of the State furnishing the troops and the other in the War Department. If either should be lost or destroyed it would be proper to file and use in lieu of it a copy of the other duplicate original, properly certified by the custodian thereof to be a correct copy. And, therefore, if it should be ascertained that St. Vrain's company was legally in the military service of the United States and that the rolls that should have been filed in this Department were lost *in transitu* or were received here and have been lost or mislaid since, it would be proper to accept these certified copies and file and use them as records of the Department."

May 15, 1891, the Assistant Secretary of War, having personally reviewed the case, decided that the Department can not recognize these men as having been regularly mustered into the United States service or as having been actually in that service.

On May 19, 1891, Hon. Mr. Joseph was advised by letter of the decision of the Department.

On the 15th of January, 1892, Mr. Joseph again submitted the case and requested, in view of the report of Col. Price showing the service performed by this company, that the question of its recognition as having been properly in the military service of the United States be reconsidered.

In response to this last request the Secretary of War addressed Mr. Joseph in a letter, of which the following is a copy:

WAR DEPARTMENT,
Washington City, January 20, 1892.

Hon. ANTONIO JOSEPH,
House of Representatives, City:

SIR: In compliance with your oral request of the 14th instant, I have the honor to inform you that I have carefully reviewed the record and evidence submitted in the matter of Capt. St. Vrain's company of New Mexico Volunteers in the Mexican war. I regret to say that, as a result of my study of the case and the opinion of the acting judge-advocate-general thereon, I find myself without the authority of law to afford that relief to which I know the members of this company are equitably entitled, and to grant which would have given me a personal pleasure.

There is no question as to the substantial facts in this case, or that the men of Capt. St. Vrain's company performed valuable military service in connection with other organizations that were regularly mustered into the service of the United States, but there is nothing to show that the officer who accepted their services had any authority for so doing. Consequently there could have been no legal muster-in of these men, and if this Department were now to make a record to show that there was such a muster-in, which is absolutely essential to their recognition as having been in the military service, this record would be erroneous and contrary to the fact.

It is proper to add that this case has been heretofore thoroughly investigated by this Department and the conclusion reached was the same as that to which my own investigation has led me. I am satisfied that the only source of relief for these deserving men is in special legislation by Congress, and I would suggest that you prepare and introduce a bill having that end in view. It is needless to say that such a bill will meet with my hearty approval.

Very respectfully,

S. B. ELKINS,
Secretary of War.

Roster of Capt. Ceran St. Vrain's Company, New Mexico Mounted Volunteers.

Ceran St. Vrain, captain.
 Chas. Metcalf, first lieutenant.
 Geo. Peacock, second lieutenant.
 H. N. Smith, first sergeant.
 Robt. Cary, second sergeant.
 Lenard W. Folger, third sergeant.
 Richard B. Dolan, fourth sergeant.
 Edward Chadwick, first corporal.
 James H. Quinn, second corporal.
 J. R. Tulles, third corporal.
 Preston Beck, fourth corporal.
 Chas. Autibes, private.
 Thos. Autibes, private.
 Lorenzo Atkins, private.
 Pedro Anay, private.
 Julio Armenta, private.
 Thos. Biggs, private.
 Vidal Bergeron, private.
 Henry Cuniffe, private.
 Manuel Chaves, private.
 Batiste Chalifoux, private.
 Andrew Constance, private.
 Antonio Conoyes, private.
 Richard Campbell, private.
 Geo. H. Crosby, private.
 Wm. Durring, private.
 Lorenzo DeForest, private.
 Benjamin Day, private.
 Edw. T. Davis, private.
 Julio Esquibel, private.
 Rafael Esquibel, private.
 Geo. H. Fuller, private.
 Herman Grolman, private.
 Jas. M. Giddings, private.

Geo. Gould, private.
 O. H. Hovey, private.
 Jno. J. Harper, private.
 Caleb I. Hamilton, private.
 Franklin K. Howlet, private.
 Peter Joseph, private.
 Chas. Leroux, private.
 Benal Leroux, private.
 Jas. W. McGuire, private.
 ——— Mitchell, private.
 Wm. G. Morgan, private.
 Joseph Nangle, private.
 Henry Nangle, private.
 Nicolas Pino, private.
 ——— Papin, private.
 Joseph Pomeroy, private.
 Joseph Pley, private.
 Jas. Powers, private.
 Jno. W. Randal, private.
 O. R. Rhoman, private.
 Robt. Robbins, private.
 Wm. Rankins, private.
 C. Robidoux, private.
 Edw. Rollins, private.
 Antonio Sandoval, private.
 Batiste Sabourain, private.
 Michael Sanford, private.
 Anthony Thomas, private.
 Chas. Town, private.
 E. I. Vaughn, private.
 I. Vallant, private.
 Walter White, private.
 T. D. Wharton, private.
 Jas. Wheeler, private.

Respectfully submitted.

The SECRETARY OF WAR.

F. C. AINSWORTH.
Major and Surgeon, U. S. Army.

1. The American Medical Association is a non-profit corporation organized for the purpose of promoting the science and art of medicine and the health of the people of the United States.	1. The American Medical Association is a non-profit corporation organized for the purpose of promoting the science and art of medicine and the health of the people of the United States.
2. The Association is organized into a national organization and into state and local organizations.	2. The Association is organized into a national organization and into state and local organizations.
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CHICAGO, ILL., MAY 1, 1914

Vol. 11, No. 19
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RATE OF DUTY ON CHOCOLATE.

MAY 20, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. COCKRAN, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany H. Res. 91.]

The purpose of this joint resolution is to fix the rate of duty on all chocolate, other than chocolate confectionery, at the rate of 2 cents per pound.

Paragraph 315 of the tariff act of 1890 reads:

Chocolate (other than chocolate confectionery, and chocolate commercially known as sweetened chocolate), 2 cents per pound.

Under this resolution the bill will read:

Chocolate (other than chocolate confectionery), and chocolate commercially known as sweetened chocolate, 2 cents per pound.

It will be observed that the committee does not suggest any change in the phraseology of the existing law, but limits its recommendation to a change in the number of words included in parenthesis.

Under the law as it stands at present, sweetened chocolate has been classed as confectionery by the appraisers at some of the principal seaports, and a duty has been levied upon it of from 15 to 50 cents per pound.

This rate of duty is prohibitive.

The adoption of this resolution will result in excluding sweetened chocolate from classification as confectionery, and will therefore operate to reduce the duty now levied upon it to 2 cents per pound.

In the second session of the Fifty-first Congress, the Committee on Ways and Means recommended the passage of an amendment of the same import as that contemplated by this joint resolution, but the recommendation was not adopted by the House.

The operation of the existing law has worked great hardship to many persons engaged in the importation of chocolate, and your committee does therefore recommend the passage of the joint resolution.

Amend the title so as to read: "Joint resolution to correct an error in the act entitled 'An act to reduce the revenues and equalize the duties on imports, and for other purposes,' approved October first, eighteen hundred and ninety."

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

FOR THE YEAR 1880

REPORT

TO THE HOUSE OF REPRESENTATIVES

IN RESPONSE TO A RESOLUTION PASSED BY THE HOUSE OF REPRESENTATIVES

ON APRIL 10, 1879

AND BY THE SENATE

ON APRIL 10, 1879

AND BY THE HOUSE OF REPRESENTATIVES

ON APRIL 10, 1879

AND BY THE SENATE

ON APRIL 10, 1879

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ON APRIL 10, 1879

AND BY THE SENATE

ON APRIL 10, 1879

JUDGMENTS AND DECREES OF THE HIGHEST COURTS OF
THE CHEROKEE, CREEK, SEMINOLE, CHOCTAW, AND
CHICKASAW TRIBES OF INDIANS, RESPECTIVELY.

MAY 20, 1892.—Indefinitely postponed and ordered to be printed.

Mr. OATES, from the Committee on the Judiciary, submitted the following

ADVERSE REPORT:

[To accompany S. 1548.]

The Committee on the Judiciary, to whom was referred Senate bill 1548, having had the same under consideration, make the following report:

Intelligent representatives of several of these Indian tribes came before the committee and objected to the favorable consideration of said bill, on the ground that it was not necessary and interfered with their rights of local self-government. The committee find that in the treaty entered into with the Cherokee tribe on the 29th of December, 1835, the fifth article thereof reads as follows:

The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee Nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them: *Provided always*, That they shall not be inconsistent with the Constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country by permission, according to the laws and regulations established by the government of the same.

Article 13 of the treaty of July 31, 1866, is in the following language:

The Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such manner as may be prescribed by law: *Provided*, That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty.

Your committee are of opinion that these stipulations in the treaties existing between the United States and the Cherokee tribe were intended to guarantee unto that tribe or nation of Indians the right to have determined in their own tribunals all civil and criminal cases arising within their country in which members of the nation shall be the only parties, or where the cause of action originated within the territory of said Cherokee Nation.

2 JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

All five of these tribes of Indians are civilized and capable of self-government. If intruders settle among them, they should submit to the final decision of the local tribunals. If this bill were to become a law a very large number of appeals would be taken to the Supreme Court of the United States, which now has upon its docket more than 1,500 cases untouched at the term which has just adjourned.

Therefore the committee report the bill back to the House adversely, with recommendation that its consideration be indefinitely postponed.

DAMS ACROSS THE KANSAS RIVER.

MAY 20, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. GEARY, from the Committee on Interstate and Foreign Commerce,
submitted the following

REPORT:

[To accompany S. 2437.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 2437) granting to the Topeka Water and Electric Power Company, of Kansas, the right to erect and maintain a dam or dams across the Kansas River, within Shawnee County, in the State of Kansas, report the same back without amendment and recommend that it do pass.

It seems to be quite certain that this stream is not now a navigable stream; and it is asserted that, if it were so, being wholly within the territorial limits of the State of Kansas, it is not within the jurisdiction of Congress. Without undertaking to pass upon the latter question, which it is wholly unnecessary to discuss, and dealing with this matter only in a practical way, it is very manifest that the interests of navigation can not be impaired on a stream where there is no navigation. With a wise precaution, however, this bill reserves to Congress the right to alter, amend, or repeal it at its pleasure.

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FORT McCLARY MILITARY RESERVATION.

MAY 20, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MITCHELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 4844.]

The Committee on Military Affairs, to which was referred the bill (H. R. 4844) to authorize the Secretary of War to convey to school district No. 12, of Kittery, Me., a portion of Fort McClary military reservation, in exchange for other land, have considered the same and do report as follows:

A similar bill was favorably reported from the Committee on Military Affairs of the Fifty-first Congress, in which the opinion was expressed that the proposed exchange of land held, but not owned, by the school district for some held by the Government, but owned by the school district, would be advantageous both to the United States and the school district. This view is concurred in by your committee and meets the approval of the War Department.

The facts are fully set forth in the accompanying papers, herewith attached, and made a part of this report.

Your committee report the bill back with an amendment striking out all of section 2, and as so amended recommend that the bill do pass.

WAR DEPARTMENT,
Washington, March 17, 1892.

SIR: I return herewith House bill 4844, Fifty-second Congress, first session, "to authorize the Secretary of War to convey to school district No. 12, of Kittery, Me., a portion of Fort McClary military reservation in exchange for other land," which was referred to this Department on March 11, 1892, and beg to invite your attention to the inclosed report of the Chief of Engineers, dated the 16th instant.

Very respectfully,

S. B. ELKINS,
Secretary of War.

The CHAIRMAN OF THE COMMITTEE ON MILITARY AFFAIRS,
House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS, UNITED STATES ARMY,
Washington, D. C., March 16, 1892.

SIR: I have the honor to return herewith H. R. 4844, Fifty-second Congress, first session, a bill "to authorize the Secretary of War to convey to school district No. 12, of Kittery, Me., a portion of Fort McClary military reservation in exchange for other land," which was referred by the House Committee on Military Affairs for the views and recommendations of the War Department.

The bill is identical with H. R. 8590, Fifty-first Congress, second session, the draft of which was prepared in this office and sent by the Secretary of War to the Speaker of the House of Representatives by letter of March 24, 1890, and upon which report was subsequently made by this office under date of April 4, 1890.

No objection is known to the passage of the bill, and its approval by the Secretary of War is recommended.

Very respectfully, your obedient servant,

THOS. LINCOLN CASEY,
Brigadier-General, Chief of Engineers.

Hon. S. B. ELKINS,
Secretary of War.

WAR DEPARTMENT,
Washington, April 5, 1890.

SIR: I return herewith H. R. 8590, "To authorize the Secretary of War to convey to school district No. 12, of Kittery, Me., a portion of Fort McClary military reservation in exchange for other land," referred to this Department on the 12th instant, and have the honor to state that upon reference of the bill to the Chief of Engineers he remarks that there is no objection to favorable legislation thereon, and in this I concur.

It is noticed that by a typographical error the letter "t" has been omitted from word "twelve" in section 1, line 5, of the bill.

Very respectfully,

REDFIELD PROCTOR,
Secretary of War.

Hon. B. M. CUTCHEON,
Chairman Committee on Military Affairs, House of Representatives.

WAR DEPARTMENT,
Washington, March 24, 1890.

SIR: I have the honor to inclose a letter from the Chief of Engineers, dated the 19th instant, showing in what manner the United States obtained possession of the lot owned by school district No. 12, of Kittery, Me., within the limits of the Fort McClary military reservation, together with the draft of a bill authorizing the Secretary of War to convey to the said school district, for school purposes, a certain portion of the military reservation of Fort McClary in exchange for the lot in question, prepared in accordance with the request contained in your letter of January 13 last, and which, if it becomes a law, will, it is believed, accomplish the purpose desired by you and your correspondent, Mr. Horace Mitchell, jr., of Kittery Point, whose letter to you of January 10 is herewith returned.

The delay in the matter has been occasioned by the difficulty experienced by the Engineer Department in procuring information to serve as a basis for the proposed legislation.

Very respectfully,

REDFIELD PROCTOR,
Secretary of War.

Hon. THOMAS B. REED,
Speaker of the House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS, U. S. ARMY,
Washington, D. C., March 19, 1890.

SIR: I have the honor to return herewith letter of Hon. T. B. Reed, House of Representatives, of January 13, 1890, inclosing one from Mr. Horace Mitchell, jr., of Kittery Point, Me., of January 10, 1890, relative to the preparation of a bill for introduction into Congress looking to the conveyance of a portion of the Fort McClary, Me., military reservation by the United States to school district No. 12, in the town of Kittery, in exchange for a certain lot owned by said school district No. 12, within the limits of that reservation, with the draft of a bill which, if it become a law, will, it is believed, accomplish the result contemplated without detriment to the interests of the United States in the premises.

By deed dated May 22, 1846, Robert G. Safford conveyed to Lieut. Isaac I. Stevens, acting for the United States, a tract of land, which included within its limits the lot owned by school district No. 12, on which the schoolhouse stood, although that lot had previously (December 4, 1843) been conveyed to the school district by the said

Safford by a deed duly recorded in the York County registry of deeds. In a letter to the Secretary of War, dated September 9, 1846, the Attorney-General, in giving an opinion upon the title to this land, stated: "The district attorney for the district of Maine having certified to me that the title of the vendors to the land sold is valid and perfect, and that the conveyances are in due form, I approve the same." The district attorney in his researches apparently overlooked the deed from Safford to the school district.

It appears that during the war of the rebellion the schoolhouse interfered with plans for the extension of Fort McClary, and that it was moved from the lot owned by the school district to its present site, as a military necessity.

It appears from a report of Lieut. Col. Jared A. Smith, Corps of Engineers, to whom the matter was referred, and a letter from Mr. Mitchell to Col. Smith, herewith inclosed, that the arrangement now proposed will be acceptable to the school district, and that while the piece of land proposed to be conveyed to the school district is larger than that to be received in exchange, its value is no greater for the purposes of the United States.

It is estimated that the sum of \$900, proposed to be appropriated by the bill, will be sufficient to defray the expenses attending the exchange of land, the removal of the schoolhouse, and the locating of the same upon the new site.

The delay in this matter has been occasioned by the difficulty in procuring information to serve as a basis for the proposed legislation.

Very respectfully, your obedient servant,

THOS. LINCOLN CASEY,
Brig. Gen., Chief of Engineers.

HON. REDFIELD PROCTOR,
Secretary of War.

KITTERY POINT, ME., *January 10, 1890.*

MY DEAR MR. REED:

If you remember, you requested me to write you in relation to the schoolhouse lot in district No. 12 the 1st of January, 1890. The facts in the case are: District No. 12 owned and holds a deed of a tract of land on which was located a schoolhouse, and this lot is now in the reservation of Fort McClary. The schoolhouse was moved to its present location, and what we wish to bring about by your assistance is to obtain a deed of a lot near its present location in exchange for the one owned by the district, so that the house can be repaired and fenced in. I presume that there is a map of the fort in the War Department, so that you can obtain the necessary information in regard to location, etc., in Washington. As I understand the matter, it requires an act of Congress to obtain what we desire, and I trust you will be able to find time to assist us in the matter.

Hoping to hear from you in regard to the matter and thanking you for what you did for me last spring, I am

Yours, truly,

HORACE MITCHELL, JR.

DELIVERY AND SALE OF ICE ON SUNDAY.

MAY 20, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. COBB, of Alabama, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany H. R. 8367.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 8367) to prohibit the delivery and sale of ice within the District of Columbia on Sunday, having considered the same, make a favorable report thereon, with the following amendment:

Add to the first section the following words: "except between the hours of 7 and 9 o'clock a. m., and 5 and 6 o'clock p. m.

The passage of this bill is asked for by all the ice companies and their employés in the District of Columbia. Its effect will be to relieve these employés, some two thousand in number, from the necessity of continuous service on Sunday, and will in no respect interfere with the necessities or comfort of the people of the District.



GEN. NAPOLEON J. T. DANA.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HULL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 1496.]

The Committee on Military Affairs, to whom was referred the bill (S. 1496) for the relief of Gen. Napoleon J. T. Dana, having had the same under consideration, unanimously recommend that the same do pass.

The Senate report, hereto attached, is made a part of this report.

[Senate Report No. 220, Fifty-second Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 1496) for the relief of Gen. Napoleon J. T. Dana, respectfully report:

Napoleon J. T. Dana graduated from the Military Academy in 1842; was thereupon appointed second lieutenant in the Seventh Infantry, and continued in the service until 1855, when he resigned. During this period he was brevetted as captain for gallant and meritorious conduct in the battle of Cerro Gordo, in which battle he was severely wounded.

Immediately after his resignation he entered into business in St. Paul as a banker, and prosecuted that business with great success. Upon the breaking out of the rebellion he felt it his duty to rejoin the service, and was appointed colonel of the First Minnesota Infantry October 2, 1861. He was appointed brigadier-general February 3, 1862, and major-general November 19, 1862. As commander of regiment, brigade, and division, at various times, he served in the Army of the Potomac, and was severely wounded in the battle of Antietam. He afterwards returned to duty. As a division commander he commanded the troops on the coast of Texas up to March, 1864. He afterwards commanded the district of Vicksburg in 1864. He was afterwards put in command of the Sixteenth Army Corps, and commanded the Department of the Mississippi to May 12, 1865. On May 27, 1865, he tendered his resignation, "in view of the immediate close of the war, and with the opinion that my services will not be now longer required."

After his resignation, Gen. Dana engaged in business, but the results were not fortunate. He is now 70 years old, incapable of work, and has no estate. He had two sons, one of whom died of consumption about ten years ago. The other son graduated in medicine, but, just as he was getting into successful practice in New York City, was attacked with consumption and was compelled to go to Florida, and although his health has been somewhat improved, he can not be of any assistance in supporting his father.

The military career of Gen. Dana is more particularly detailed in the annexed letter from the Adjutant-General.

In view of the long and meritorious services of this officer, the committee recommend the passage of the bill.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, January 21, 1892.

*Statement of the military service of Napoleon J. T. Dana, of the United States Army,
compiled from the records of this office.*

He was a cadet at the United States Military Academy July 1, 1838, to July 1, 1842, when he was graduated and promoted in the Army to second lieutenant, Seventh Infantry, July 1, 1842; first lieutenant, February 16, 1847; captain, assistant quartermaster, March 3, 1848. Brevet captain April 18, 1847, "for gallant and meritorious conduct in the battle of Cerro Gordo, Mexico."

He joined his regiment October 15, 1842, and served with it at Fort Pike, La., and Pass Christian, Miss., to August 18, 1845; in the military occupation of Texas, and in the war with Mexico until wounded at the battle of Cerro Gordo, Mexico, April 18, 1847; absent sick, on account of wounds and on recruiting service, to March, 1848; on duty as quartermaster at Boston, Mass., to August 26, 1848; at Fort Snelling, Minn., to August, 1849; at Fort Ripley, Minn., to May, 1850; at St. Louis, Mo., to November, 1850; at Fort Ripley, Minn., to December, 1851; at Washington, D. C., settling his accounts and on temporary duty in Quartermaster-General's Office, to September, 1852; on duty at Fort Snelling, Minn., to May, 1853, and at Fort Ridgely, Minn., until he resigned March 1, 1855.

He reëntered the service as colonel First Minnesota Infantry, October 2, 1861. Appointed brigadier-general volunteers, February 3, 1862, major-general volunteers, November 29, 1862.

He commanded his regiment in the Army of the Potomac, to February 26, 1862; commanded brigade in Second Corps, to July 10, 1862; on sick leave to September, 1862; commanded Third Brigade, Second Division, Second Corps, to September 17, 1862, when severely wounded at the battle of Antietam, Md.; absent on account of wounds to November 27, 1862. Member of Military Commission, etc., to May, 1863; commanding post of Philadelphia, Pa., June 16 to August 27, 1863; Second Division, Thirteenth Corps, September 28 to October 26, 1863; Thirteenth Corps to January 9, 1864; commanding troops on coast of Texas, to March 11, 1864; First Division, Thirteenth Corps, to April 1, 1864; awaiting orders to April 23, 1864; on inspection duty, under orders of the Secretary of War, to August 7, 1864; commanding district of Vicksburg to October 15, 1864; Sixteenth Army Corps, to December 8, 1864; and Department of Mississippi, to May 12, 1865. Awaiting orders until he resigned May 27, 1865.

He tendered his resignation "in view of the immediate close of the war and with the opinion that my [his] services will not now be longer required."

J. C. KELTON,
Adjutant-General.

HENRY UNTERLEITER.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CROSBY, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 333.]

The Committee on Military Affairs, to whom was referred the bill (S. 333) for the relief of Henry Unterleiter, alias Cook or Koch, having carefully considered the same, recommend that the bill do pass with the following amendment:

After the word "discharge," strike out the words "as of date January first, eighteen hundred and sixty-four," and insert in place thereof the following: "*Provided, however,* That no pay or emoluments shall become due by reason of the passage of this act."

The bill was favorably reported by the Senate Committee on Military Affairs in the Fifty-first Congress, and said report is as follows:

It appears by sufficient evidence that Henry Unterleiter, whose assumed name was Henry Cook or Koch, was at the time of his enlistment an orphan boy between 15 and 16 years of age, and was under the guardianship of one Kipp.

He enlisted as a private in Company B, Fifty-second New York Infantry Volunteers, in 1861, without the knowledge or consent of his guardian or of his friends, under the assumed name of Henry Cook or Koch, and served with his regiment up to the date of the battle of Gettysburg, except for about ten months when he was on detached service with a battery.

The boy fought at Fair Oaks, White Oaks Swamp, Malvern Hill, Antietam, Fredericksburg, and Gettysburg, in which battle he was severely wounded in the right leg and was sent to the hospital at Bedloe Island. After his discharge from the hospital he went to his brother's and sister's home in New York City, and in 1864 was still suffering there from the wound in his leg. He was prevented from returning to his regiment by the influence of his brother and sister and guardian, although he was anxious to do so. The guardian threatened that if he attempted to return he would arrest and confine him in the house of refuge. Unterleiter applied to the War Department to have the charge of desertion removed. The application was denied December 21, 1889, upon the ground that the case was not covered by existing law.

All the papers submitted to your committee show that this claimant when a mere boy fought with conspicuous gallantry in many battles and was wounded in the service of his country, although he was not of an age which entitled his country to demand his services.

It is the opinion of the committee that the charge of desertion against him, which resulted from the facts above stated, should be removed, and the passage of the bill is recommended, with the following amendments: Insert the words "or Koch" after the word "Cook," in the body of the bill, and the words "alias Cook or Koch" after the word "Unterleiter" in the title.

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MARY CHAMBERLIN.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUTLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 4019.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4019) granting a pension to Mary Chamberlin, submit the following report:

The evidence in the files of the Pension Bureau in this claim furnishes the following, upon which your committee would report and recommend its passage.

The claimant, Mary Chamberlin, was allowed a pension as dependent mother, November 10, 1863, upon the death of her son, Ebenezer Chamberlin, of Company H, Second Iowa Cavalry, who died of wounds received in battle November 10, 1863. Said pension was continued until the year 1889, when it was stopped upon the statement that she was not the mother but the stepmother of the soldier. An examination of this statement revealed the following state of affairs:

The mother of the soldier died when he was an infant. This claimant took and cared for him until he was 4 years old, and then became his stepmother, and continued as such up to the son's death. Sometime before the son's enlistment the father died and the son contributed to her support up to the time of his death. For the reason that she had first taken the child in its early infancy, and afterwards became its stepmother, by marriage, she considered herself its lawful mother, and in her application for pension gave full information as to their relationship.

The investigation made by the Pension Bureau discloses the fact that the claimant is 64 years old, lives upon a widowed daughter, who has no other support than by needlework.

In this connection your committee appends the letter of the honorable Commissioner of Pensions, with his approval of a measure of relief by Congress.

In view of the great merit in this claim and the many precedents, your committee recommend the passage of the bill.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
Washington, D. C., January 18, 1890.

SIR: I have the honor to submit herewith the papers in the pension claim above indicated, for transmittal through your office to the chairman of the Committee on Invalid Pensions, House of Representatives, that the attention of Congress may be invited to the facts in the case for such action in the premises, under the provisions

of joint resolution approved May 29, 1830, as that honorable body may deem just and proper.

Mary Chamberlin was pensioned in 1866 as the dependent mother of the above-named soldier, and was in receipt of her pension until September 5, 1889, when further payment was suspended, pending examination to determine the truth of the allegation recently made that she was the stepmother of the soldier, which fact was admitted by her, whereupon her name was dropped from the rolls.

It appears in this case that Mrs. Chamberlin married the soldier's father when soldier was between 4 and 6 years of age, that she cared for him as her own child, and that he, prior to and during his service, contributed to her support, she becoming, about the time of soldier's enlistment, a widow, in destitute circumstances.

Mrs. Chamberlin is now 64 years of age, in very feeble health, is said to have but a short time to live, and lives with and is dependent upon a widowed daughter who supports herself and family by her needle.

It is believed that the case possesses equitable features and that relief should be sought at the hands of Congress.

Very respectfully,

GREEN B. RAUM,
Commissioner.

The SECRETARY OF THE INTERIOR.



EARNEST C. EMERSON.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. McKINNEY, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany S. 1637.]

The Committee on Invalid Pensions have considered the bill (S. 1637) which was passed by the Senate April 13, 1892, granting a pension to Earnest C. Emerson and submit the following report:

Orrin M. Emerson served in Company H, First Rhode Island Cavalry, from September 6, 1862, to June 6, 1865, and died September 25, 1875, having never applied for a pension. His widow died August 3, 1889, having never applied for pension.

The beneficiary of this bill is the son of the soldier and is now 32 years of age, and a hopeless and helpless imbecile as shown by the testimony of physicians. These facts appear from the papers on file in the Pension Bureau. A claim filed by his guardian was rejected on the ground that he could not be pensioned under the act of June 27, 1890, because over 16 years of age at the passage of the act. It is not alleged that the soldier's death was in any way due to his military service. The son is dependent entirely on a maiden aunt who has been appointed his guardian and who is little able to care for him.

Your committee recommend the passage of the bill after being amended as follows:

Strike out the words "at the rate of eighteen dollars per month" in line 5, and insert in lieu thereof the words "subject to the limitations and provisions of the act of June 27, 1890."

MRS. ADELIA NEW.

MAY 20, 1892.—Indefinitely postponed and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany S. 2605.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 2605) granting a pension to Mrs. Adelia New, of Indianapolis, Ind., have had the same under consideration and submit the following report:

The committee is informed that since the passage of this bill by the Senate the beneficiary has died. We therefore recommend that the further consideration of the bill be indefinitely postponed.



LOUIS HENINGER.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SNOW, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 1002.]

The Committee on Invalid Pensions have considered the bill (H. R. 1002) granting a pension to Louis Heninger and submit the following report:

The petitioner was during the war captain of the steamer *Lady Pike*, which was engaged in carrying supplies to the United States fleet in the Mississippi River. On a trip from Cairo to Vicksburg in July, 1862, with provisions and coal for the fleet, he was informed that there was a battery of six pieces with 200 men about 2 miles above Greenville, Miss., and that the steamer *Lake in the Woods* had been fired on and sunk the day before. It was thought necessary to run the battery and this was accordingly done on July 26, 1862; the boat was fired on but no one was hurt except Capt. Heninger who was struck on the knee by a piece of shell.

These facts are shown by the sworn statements of John E. Winter, of Quincy, Ill., who was an ensign and pilot in the U. S. Navy, and Nelson Platte, of St. Louis, Mo., who was engineer of the *Lady Pike*, both of them being eyewitnesses to the occurrence.

It appears that Mr. Heninger is now infirm, having suffered from rheumatism and partial paralysis resulting from an apoplectic stroke.

This petitioner was not in the military or naval service of the United States, but was a civilian employé of the Quartermaster's Department; but inasmuch as he was actually wounded in action by the enemy, your committee are of the opinion that he should be pensioned in proportion to the degree of disability from such wound, and therefore recommend that the bill do pass, after being amended as follows:

Strike out all the remainder of the bill after the word "limitations," in line 5, and insert in lieu thereof the words, "and provisions of the pension laws, without regard to rank, at a rate proportionate to the degree of his disability from shell wound of the knee."

FRANCES B. WILSON.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PEARSON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8618.]

The Committee on Invalid Pensions have considered the bill (H. R. 8618) granting a pension to Frances B. Wilson, and submit the following report:

Ross Wilson enlisted September 19, 1861, in Company F, Forty-ninth Ohio Volunteers, and died in service July 6, 1862. His widow, Frances B. Wilson, was pensioned at \$8 per month from the date of his death until 1875, when she remarried. The records of the Pension Office show that she was last paid to December 4, 1875. It is shown that she married one Hiram Munger, who was a worthless character and so cruel and abusive to the petitioner that she, in 1884, secured a divorce and was restored to her former name; that she is now aged and indigent. These facts are shown by statements of Lester Wilson, and J. R. Bartlett, of Fremont, Ohio, and Judge John M. Lemmon, of Clyde, Ohio.

Hon. Wm. E. Haynes, a member of Congress from Ohio, certifies in writing of his own personal knowledge that Mrs. Wilson is in indigent circumstances, without other means of support than the contributions of persons not legally bound to support her, and that she was divorced from her second husband Munger and restored to the name of her former husband, Wilson. Mr. Haynes also certifies to the high standing and veracity of Messrs. Wilson, Lemmon, and Bartlett, above referred to.

Your committee return the bill with the recommendation that it do pass.

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MRS. C. E. PHILBROOK.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HARRIES, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 1735.]

The Committee on Invalid Pensions have considered the bill (H. R. 1735) to increase the pension of Caroline E. Philbrook, and submit the following report:

The petitioner is pensioned at \$20 per month as widow of Alvah Philbrook, who served as captain of Company D, Twenty-fourth Wisconsin Volunteers, from August 19, 1862, until killed, November 30, 1864.

An increased rate is asked for on the ground that the soldier was commissioned as major June 8, 1864, and performed the duties of that office from that date until his death.

A letter on file with this committee dated February 20, 1885, written by Hon. Arthur McArthur, jr., who was major of the regiment and commissioned lieutenant-colonel, states that—

Capt. Philbrook was commissioned major sometime in 1864; without being mustered in that rank, he acted in that capacity and performed the functions of the office by my order until killed at Franklin, Tenn., November 30, 1864. He was killed in battle while performing the duties of major.

The Secretary of War states that during the period from June 8, 1864, to Capt. Philbrook's death, November 30, 1864, no vacancy existed for major in the Twenty-fourth Wisconsin Volunteers, Arthur McArthur, jr., having held that office during that time.

The records of the War Department show that a numerical vacancy for colonel occurred August 27, 1863, and to fill the vacancy occasioned thereby, Lieut.-Col. West was commissioned colonel, Maj. McArthur, jr., as lieutenant-colonel, and Capt. Philbrook as major.

During the period mentioned, however, the regiment was reduced below the minimum number, and was not therefore under the law entitled to an officer of the grade of colonel, hence, although service may have been rendered in their advanced grades by the officers named, recognition as such can not be granted them under the law, in consequence of the inability of Lieut. Col. West to be recognized as colonel, leaving no vacancies in the lower grades.

In view of the fact that the soldier performed the duties of major for nearly six months prior to his death, and was actually killed in battle while performing the duties of that rank, your committee is of opinion that his widow should be pensioned at the rate provided by law for the widows of majors, and therefore recommend that the bill do pass, after being amended by striking out the word "thirty" in line 8 and inserting in lieu thereof the words "twenty-five."

IVY STIERS.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUTLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7933.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 7933) granting a pension to Ivy Stiers, submit the following report:

Ivy Stiers was an army nurse who served in that capacity, in actual care of the sick and wounded soldiers during the civil war. Said service is proved by numerous affidavits and also by the record in the office of the Surgeon-General of the United States, and extended over a period of more than a year. Her present condition of health is such that she can not support herself, and her financial condition such that she is compelled to depend for support on persons not legally bound to aid her.

This is a meritorious case, and entirely within the line of precedents in this class of cases.

Your committee returns the bill with the recommendation that it do pass.



SARAH COWGILL.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUTLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 6330.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6330) granting a pension to Sarah Cowgill, submit the following report:

The faithful service of the beneficiary of this bill, as a nurse in the actual care of the sick and wounded soldiers during the war of the rebellion, is fully attested by affidavit of Mrs. Annie Wittenmyer. The services thus attested, and for which this pension is asked, continued more than twelve months and were rendered in the following hospitals: Chattanooga, Tenn., Sedgwick and Foundry Hospitals, Louisville, Ky., and the floating hospitals near New Albany, Ind.

Said service was rendered under regular commission from the United States Christian Commission.

The evidence further shows that Sarah Cowgill is now past 66 years of age and dependent on others for support.

Your committee deems the case a worthy one and reports the bill with the recommendation that it do pass.

SARAH A. NOBLE.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUTLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 3170.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3170), granting a pension to Sarah A. Noble, have examined and considered the same and recommend that it do pass.

The facts in this case as shown to the committee by the statement of Mrs. Noble, and supported by the indorsement of a large number of the leading citizens of her locality, are that she is now about 84 years of age, very infirm, in poor health and crippled for life by an accident, and entirely dependent for support upon the exertions of an unmarried daughter. The first husband of Mrs. Noble died in 1846, and she has been a widow from the death of her second husband for over forty years.

She had three sons who served in the Union Army in the war of the rebellion, two of whom were married, and one of these died as a result of his army service, leaving a family, and the other not only has a large family to support by his own labor, but is absolutely deaf by reason of his army service, and so is in no wise able to contribute to his mother's support.

The third son died in 1888 from the result of an accident in a mine, and this not being the result of army service the mother's claim was rejected by the Pension Bureau, but as a matter of fact it is shown that he was left in very poor health by reason of his army service, and that he was the sole source of support of his mother, and that he labored during his life to that end, and when by reason of his own health it was extremely difficult for him so to do.

Taking into consideration the service done for their country by those sons and the fact of the physical and pecuniary condition of the petitioner, it seems no more than just that the Government should aid her through a pension during the few years at most that she will survive.

KENTUCKY AND INDIANA BRIDGE COMPANY.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CARUTH, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT:

[To accompany H. R. 8861.]

The Committee on Interstate and Foreign Commerce have considered House bill 8861 and find the facts to be that the Kentucky and Indiana Bridge Company, a corporation created by and existing under the laws of the Commonwealth of Kentucky, has been in occupancy of a small tract of land connected with the property of the Louisville and Portland Canal, belonging to the United States, in the city of Louisville. This ground is in no way needed for canal purposes or any other government use. The purpose of this bill is to dispose of it to the bridge company for a fair price, to be agreed upon by the bridge company and the United States through the Secretary of War. The engineer in charge of the canal, Lieut. Col. G. J. Lydecker, reports to the Chief Engineer, Gen. Thomas L. Casey, as follows:

There would be no objection to the passage of a bill authorizing the bridge company to occupy and acquire title to so much of the land of the Louisville and Portland Canal as is now occupied by the south abutment of the Kentucky and Indiana bridge and the contiguous trestles in the approach thereto on payment to the United States by the bridge company of the fair value of such specified tract.

Gen. Casey coincides with these views of the engineer in charge, and, as the bill under consideration is framed so as to carry out the ideas of the War Department, it is reported back with the recommendation that it do pass.

NAVAL APPROPRIATION BILL.

MAY 20, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HERBERT, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 7093.]

The Committee on Naval Affairs, to whom was referred House bill 7093, with the amendments of the Senate, report that after due consideration the committee report it back, disagreeing with all the amendments recommended by the Senate.



FRANCIS W. WICKHAM.

MAY 20, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PATTON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 2251.]

The Committee on Military Affairs, to whom was referred the bill (S. 2251) for relief of Francis W. Wickham, have had the same under consideration, together with favorable report of Senate committee, with additional evidence herewith submitted, showing that the soldier did not receive any local bounty for either of his enlistments, and, noting the fact as shown by report of the War Department that the soldier rendered faithful service covering a period of two years eleven months and one-half and was finally honorably discharged after the close of the war, therefore submit with approval the Senate report with additional evidence, and recommend that the bill do pass.

[Senate Report No. 255, Fifty-second Congress, first session.]

The Committee on Military Affairs, to which was referred the bill (S. 2251) for the relief of Francis W. Wickham, have duly considered the same and submit the following report:

Your committee received from the War Department the following letter and accompanying memoranda relating to this soldier:

WAR DEPARTMENT,
Washington City, February 16, 1892.

SIR: In compliance with your request of the 13th instant (received yesterday), relative to the case of Frank Wickham, late member of Company A (transferred to Company D), Ninth Michigan Cavalry Volunteers, alias Franklin Waggle, late member of Company A (transferred to Company E), First Michigan Cavalry Volunteers, I have the honor to transmit the inclosed summary of the services of the above-named soldier, compiled from the data found in each case after a careful search of the company and regimental records on file in the Department, and to furnish you with the following additional information in the case:

Under date of May 11, 1889, J. H. Wickham, the adjutant-general of the State of Missouri, applied for removal of the charge of desertion from the record of Frank W. Wickham, Company C, Ninth Michigan Cavalry Volunteers, and made the following statement: "This soldier, although a boy of 13, already had an honorable discharge from the Sixty-eighth Ohio Infantry Volunteers at the time of his enlistment in Ninth Michigan Cavalry. While his regiment was at Covington, Ky., he became engaged in an altercation with his first sergeant and found that he had to either stand a court martial for insubordination or desert. He chose the latter course, went to Canada, staid a short time, and as shown by the record returned and enlisted under an assumed name (Franklin Waggle) in the First Michigan Cavalry." * * *

In default of the morning reports of Company D, Ninth Michigan Cavalry, for 1863 (they not being on file), it has been found impossible to determine the exact date on

which this soldier's unauthorized absence began; but the company return for July, 1863, reports this man as having deserted on July 24, 1863, and that date, having been embodied in an official report prepared within a few days afterwards, has been accepted by the Department as the correct date of desertion. A descriptive list of deserters (undated and unsigned), evidently prepared a long time subsequent to July, 1863, gives the date of his desertion as July 29, 1863, and the muster-out roll of the company, dated July 21, 1865, reports that he deserted July 11, 1863. No record has been found showing the date of desertion as August 21, 1863, but the regimental return for October, 1863, shows this man "deserter, dropped August 21, 1863."

No medical record has been found in his case, either as of the Ninth or First Michigan Cavalry Volunteers, nor do the company records indicate that he was sick or injured during such service.

As this man deserted from Company D, Ninth Michigan Cavalry, on (or before) July 24, 1863, and on November 26, 1863, enlisted in Company A, First Michigan Cavalry, in violation of the twenty-second (now fiftieth) Article of War, his absence in desertion before he reentered the service exceeded a period of four months, and for this reason the Department has been constrained to deny the application, the desired relief not being warranted by existing law (section 3 of act of March 2, 1889), although in view of the long and faithful service under his subsequent enlistment this case appears to possess much merit.

It is believed that the inclosed statement will be found to contain all the information desired by you and which is not embodied in this letter.

Very respectfully,

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

Hon. F. M. COCKRELL,
United States Senate.

Case of Francis Wickham, Company C, Sixty-eighth Ohio Volunteers; Frank W. Wickham, Companies C and D, Ninth Michigan Cavalry Volunteers; Franklin Waggle, Companies A and E, First Michigan Cavalry Volunteers.

Name under which enrolled.	Francis Wickham	Frank Wickham.....	Franklin Waggle.
Also borne as.....	.....	Frank Wickham.....	Frank Waggle.
Age.....	18 yrs.....	18 yrs.....	18 yrs.
Place of birth.....	Monroe Co., Mich.....	Monroe Co., Mich.....	Canada.
Height.....	5' 2".....	5' 4".....	5' 7".
Complexion.....	Light.....	Light.....	Fair.
Eyes.....	Blue.....	Blue.....	Blue.
Hair.....	Light.....	Light.....	Light.
Occupation.....	Laborer.....	Farmer.....	Farmer.
Enrolled, place.....	Antwerp, Ohio.....	Monroe, Mich.....	Clinton, Mich.
“ date.....	Dec. 13, 1861.....	Jan. 12, 1863.....	Nov. 26, 1863.
Mustered in, place.....	Camp Latty (Pa. ?) ..	Coldwater, Mich.....	Mt. Clemens, Mich.
“ “ date.....	Dec. 13, 1861.....	Jan. 22, 1863.....	Dec. 1, 1863.
“ “ period and rank.	3 years, a private	3 years, a private.....	3 years, a trumpeter.
“ “ organization.	Co. C, 68th Ohio Vols..	Co. C, 9th Mich. Cav. Vols.	Co. A, 1st Mich. Cav. Vols.
Transferred to organization.	.....	Co. D, “ “ “	Co. E, 1st Mich. Cav. Vols.
Transferred, date.....	.....	May 1, 1863. Regtl. order 31.	Nov. or Dec., 1865.
“ rank.....	.....	Trumpeter.....	Bugler.
Character of his service, from enrollment to termination, in each organization.	Appears to have been faithful in 68th Ohio Vols.	Morning reports of Co. D, for 1863 are not on file. Co. return for July, 1863, reports him “deserted July 24, 1863, Covington.” Muster roll of Aug. 31, 1863, shows him “deserted July —, 1863.” Muster rolls of Oct. 31 and Dec. 31, 1863, and Feb. 29, 1864, report him “deserted” (no date given). He was present with Co. June 30, 1863. (A descriptive list of deserters from 9th Mich. Cav. (undated and unsigned) shows him “deserted July 29, 1863, at Covington, Ky., probably in Canada.”)	Appears to have been faithful in 1st Mich. Cav. Vols. Regtl. return, 9th Mich. Cav. for October, 1863, (first on file), shows him “deserter, dropped Aug. 21, 1863.” Company return for August, 1863, is not on file; September, 1863, reports him “deserter” (no date).

Case of Francis Wickham, Company C, Sixty-eighth Ohio Volunteers, etc.—Continued.

Final record in each organization.	Discharged, a private, May 9 or 29, 1862, "by E. C. Franklin, brig. surg., at Bolivar, Tenn., disability, too young (15)."	Deserted, bugler, Co. D, 9th Mich. Cav., July (11 or) 24, 1863, at Covington, Ky. (Muster out roll gives July 11; Co. return for July, 1863, July 24.)	Discharged, bugler, Co. E, 1st Mich. Cav., March 10, 1866, at Salt Lake City, U. T. (Mustered out with Co.)
Time actually served in each organization.	Dec. 13, 1861, to May 29, 1862, 5½ months.	Jan. 12, 1863, to July 24, 1863, 6½ months.	Nov. 26, 1863, to Mar. 10, 1866, 2 years 3½ months.

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

WAR DEPARTMENT,
Record and Pension Division, February 16, 1892.

This soldier, claiming to be and giving his age as 18 years, was enrolled and mustered into the service as a private in Company C, Sixty-eighth Regiment Ohio Volunteers, on December 13, 1861, and served faithfully up to May 9 or 29, 1862, when he was discharged by Dr. E. C. Franklin, brigade surgeon, at Bolivar, Tenn., for disability, "too young," 15 years old; his name being borne on the rolls as Francis Wickham. On January 12, 1863, he was enrolled, and mustered into the service on January 22, 1863, as a private for three years in Company C, Ninth Regiment, Michigan Volunteers, and was transferred to Company D, of the same regiment, May 1, 1863, as a trumpeter.

He is borne on these rolls as Frank W. Wickham and Frank Wickham, and the rolls of said Company D, Ninth Regiment, Michigan Cavalry Volunteers, show him "deserted July 24, 1863, at Covington," and "deserted July 29, 1863, at Covington, Ky.," and "deserter dropped August 21, 1863," etc.

On November 26, 1863, he was enrolled, and on December 1, 1863, mustered into the service as a trumpeter for three years in Company A, First Michigan Cavalry Volunteers, and afterward transferred to Company E, same regiment, under the name of Franklin Waggle and Frank Waggill, and served faithfully and received an honorable discharge and was duly mustered out with his company, as a bugler, on March 10, 1866, at Salt Lake City, Utah Territory. In each of his three enlistments his age is given as 18 years, evidently so given because minors under that age were not allowed by law to be enlisted. He was discharged from his service in Company C, Sixty-eighth Ohio Volunteers, in May, 1862, for disability—too young, 15 years old.

When he enlisted in January, 1863, in the Ninth Michigan Cavalry, he could not have been over 16 years old, if so old. Being a mere youth, he had an altercation with the sergeant of his company at Covington, Ky., and left his company without permission and went to Canada; staid there a short time, and returned voluntarily and enlisted on November 26, 1863, under the assumed name of Franklin Waggle or Frank Waggle, in Company A, First Michigan Cavalry Volunteers. Was transferred to Company E and honorably discharged at expiration of service on March 10, 1866.

While he left his company without any authority, his subsequent conduct in voluntarily returning and enlisting in another company and regiment and serving faithfully until honorably discharged with his company, shows conclusively that he did not so absent himself without leave with the intent to abandon or quit the service of his country.

Under the general law the War Department has refused to remove the charge of desertion on the ground that his reenlistment in the First Michigan Cavalry was not within four months from the date of the charge of desertion—taking July 24, 1863, as the date, and his reenlistment being on November 26, 1863, two days after the expiration of four months.

Under all the circumstances in this case your committee believe it to be exceptional and justifying the relief named in the bill, and therefore report it back to the Senate and recommend its passage.

STATE OF NEW YORK, *City and County of New York*, ss:

Francis W. Wickham, being duly sworn, deposes and says that he is the same person mentioned and described in a proposed act entitled "A bill for the relief of Francis W. Wickham," and is the same person therein described as Frank Wickham, Frank W. Wickham, Franklin Waggle, and Frank Waggill.

Deponent further says that on the 26th day of November, 1863, he was enrolled, and on the 1st day of December, 1863, was mustered into the service as trumpeter or

bugler in Company A, First Regiment Michigan Cavalry Volunteers, under the name of Franklin Waggle or Frank Waggill.

Deponent further says that at the time of such enrollment and mustering into the service he did not receive any local bounty or any remuneration whatever, but that said enrollment was done solely out of his own free will and accord and only for the desire to serve his country.

Deponent further says that at no time while he served as a soldier did he receive any local bounty or any remuneration whatever, but that each enrollment and mustering into the service was taken of his own free will and accord and solely for a desire to serve his country.

FRANK WICKHAM.

Sworn to before me this 17th day of May, 1892.

[SEAL.]

ROBERT P. GETTY, Jr.,
Notary Public, Westchester County.

(Certificate filed in New York County.)

STATE OF NEW YORK, *City and County of New York*, ss:

I, William J. McKenna, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Robert P. Getty, jr., has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Westchester, with his autograph signature, and was, at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public, and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 17th day of May, 1892.

[SEAL.]

WM. J. MCKENNA,
Clerk.

WAR DEPARTMENT,
Washington City, March 3, 1892.

SIR: Referring to your personal request of this morning for certain information in connection with the inclosed bill for the relief of Frank W. Wickham, I am directed by the Secretary of War to inform you that Mr. Wickham did not gain any additional United States bounty by reason of his leaving the Ninth Michigan Cavalry and reënlisting in the First Michigan Cavalry, and that there is no evidence that he gained any other gratuity. Moreover, it is deemed proper to add that even if he should have received some additional gratuity, such as a local bounty, for instance, the Department is satisfied, from Mr. Wickham's record as a whole, that the reenlistment in the First Michigan Cavalry was not made for the purpose of securing such bounty.

Very respectfully,

F. H. AINSWORTH,
Major and Surgeon, U. S. Army.

Hon. ALEX. M. DOCKERY,
House of Representatives.

FIRE IN HOUSE OF REPRESENTATIVES FOLDING ROOM.

MAY 21, 1892.—Ordered to be printed.

Mr. WARNER, from the Committee on Public Buildings and Grounds,
submitted the following

REPORT:

[To accompany Mis. Doc. —.]

Your committee, having been authorized and directed by House resolution of March 25, 1892, to examine into and report upon the cause of the fire in the folding room of the House and premises adjacent thereto on the 22d day of March, 1892, the extent and nature of the damage thereby caused, and the means which, if any, should be taken to prevent recurrence of the same, having made such examination do report as follows:

By a special subcommittee, duly appointed, your committee has had made a careful personal inspection of all the premises occupied by the House folding room and adjacent thereto, and has questioned informally the House employes in charge of or occupied in such premises. In addition, we caused to be summoned George M. Cruikshank, the superintendent of the folding room; J. Martin McKay, foreman of the folding room; T. J. Mosely, order clerk of the folding room (near whose desk the fire occurred); Spencer Green, janitor of the folding room; Erastus Green, general workman about the Capitol (one of those present at the fire), and George Gum, Capitol policeman (the first to discover the fire), and examined them fully in regard thereto.

Having considered the facts thus observed and information thus acquired your committee reports:

That the House folding room and offices under charge of the doorkeeper, for the purpose of handling public documents at the order of the House, its committees and members, occupy six rooms in the basement floor of the Capitol, four of them subdivisions of the space No. 68 on the Capitol plan, as given in the Congressional Directory, and two others being on the east side of the basement corridor—all in the southern part of the central division of the Capitol, under Statuary Hall; and also the subbasement of the south wing of the old Capitol portion of the building, and certain rooms in the subbasement under the hall of the House.

The basement rooms described are used mainly as offices for the doorkeeper, the superintendent and chief clerk of the folding room, and of clerks and bookkeepers under them. The subbasement rooms are used exclusively for storage and work rooms, except one small room for the foreman's office. In these subbasement rooms books are stored in piles already wrapped for mailing, those most frequently called for being kept in the more accessible portion and the others

stored in the least easily approached rooms. There are now about 800,000 volumes stored in these rooms, and the space at the disposal of the folding room is greatly overcrowded, the work rooms being cramped and encroached upon by the piles of books stored, and the other rooms being so filled with books from floor to ceiling as scarcely to permit passage between them.

The storage and work rooms are all lighted by gas, almost invariably by side lights from the walls, and the heat is excessive from this source; the temperature at the time of the visit of your committee, on a cool day, the 9th of April, being 85° and 90° in several of the rooms, while in others the draft was such as to leave them uncomfortably cool. The subbasement is only 9½ feet in height from the floor to the top of the ceiling arches, and in order to accommodate the amount of matter stored it has been necessary to pile the books very near to and above the gas jets. In several instances during the late inspection the committee found lighted gas in most dangerous proximity to piles of books thus stored, and in one case a pile showed such signs of falling as to involve immediate danger. On the evening of March 22 last, a gas jet had been left burning, according to custom, over the desk of the order clerk in the subbasement, upon which desk was piled quite a considerable amount of matter, while at the side of it other matter was also piled. The indications are that the fire started here, and was carried by the draft through an opening in front of the order desk into the inner room adjoining, and communicated to the books there piled as well as the matter stacked upon the floor ready for shipment—this latter being the most nearly destroyed of any of the documents damaged.

The fire seems to have been discovered by the smoke therefrom coming into the main corridor of the basement through the folding room door, and, when first seen, to have already involved the documents in the small room west of the order clerk's desk. It was but a few minutes thereafter that an engine arrived, upon alarm given by the Capitol police, and breaking through the elevator roof, reached the flames with water and extinguished the fire. The damage done was about \$1,000; and from the fact that few, if any, of the books were so destroyed as not to be easily identified, could be, and was, definitely ascertained. We annex hereto a schedule of the documents damaged.

Your committee finds no other probable cause for fire, except the fact that the rules in regard to smoking on the part of employes, while generally known, seem not to have been strictly obeyed. The repeated instances of their violation referred to in the testimony seem to indicate a somewhat lax enforcement of any regulations in this regard.

Your committee concludes that the fire in the folding room on March 22, 1892, was probably the result of the ignition of a pile of public documents from a gas jet near to which such documents had been piled.

Your committee finds that this fire is not the first of its kind. Mr. McKay, the foreman of the folding room, testifies to another one in 1884; one in 1887; one in 1889; and one in 1891 and one in February, 1892. On the last occasion a pile of books had fallen against the desk and caught from a gas jet. On a former one a candle had fallen and set fire to a barrel of twine. In the other cases the apparent cause was the ignition of piles of documents from gas jets against which they had fallen. On each of these other occasions the damage was inconsiderable, not to exceed \$50 in any one case.

As to how recurrence of these accidents may be prevented, your committee reports that, while personal precautions on the part of each employé may do much to lessen the chances of disaster; yet, generally

speaking, the premises occupied for folding and storage room in the subbasement are in so dangerous a condition that only most exceptional discipline and vigilance on the part of those there employed can avert a continuous series of accidents by fire. Rules should be strictly enforced forbidding all smoking upon the premises occupied by the folding room or by any one of the employes of the Doorkeeper during his hours of duty; and we especially recommend that electric burners near the center of the arches be substituted for the present gas jets at the sides of the room.

Your committee has consulted the Architect of the Capitol as to the probable cost of this alteration and finds that it would involve an expense of not to exceed \$1,150—of which \$1,000 would be for the purchase of a small dynamo and engine, the present boiler furnishing abundant power to run these. The purchase of the new dynamo and engine is recommended because, first, the present electric plant at the Capitol is not owned by the Government, but is rented under contract, providing for light only during the sessions of Congress; while the folding rooms must be supplied with light without reference as to whether Congress is in session or not. Even if this were otherwise it would be economy to use a small dynamo and machine for this especial purpose rather than keep the more extensive plant in use for so limited a supply.

In this connection your committee note that the premises occupied by the House folding room are inadequate for the purposes to which they are devoted; most inconvenient in arrangement and most uncomfortable and unhealthy for those employed there. Their use should be discontinued for folding-room purposes, and the cause of the late fires, as well as danger of other recurrences removed by the relegation to more fitting quarters of the work of the folding room.

As to the urgency of the special recommendation now made, your committee are unanimous that the present condition of things involves a constant and great risk of irreparable damage to property and great inconvenience to public business. We report herewith the testimony taken and also a resolution, for which we ask present consideration, to authorize and direct the substitution of electric light for gas in the premises in question.

RESOLUTION.

Resolved, That the Architect of the Capitol be, and hereby is, authorized and directed to substitute electric lights instead of gas in the premises occupied by the House folding room, which electric lights are in general to be placed in the center of the arches of the ceilings, and so as to permit of the most extensive use of the premises, without interference with such lights or danger therefrom; and that the expenses involved in carrying out this direction be paid from the contingent fund of the House.

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 8, 1892.

The Honorable Subcommittee on Public Buildings and Grounds:

GENTLEMEN: I have the honor to transmit herewith for your information a list of books, pamphlets, and maps destroyed by fire and water in the folding room on the night of March 22, 1892.

Very respectfully, your obedient servant,

J. MARTIN MCKAY,
Foreman Folding Room.

Copies Agricultural Report—

1887	300
1889	100
1890	1,600

4 FIRE IN HOUSE OF REPRESENTATIVES FOLDING ROOM.

Eulogies on—	
Beck	400
Randall	250
Hahn	900
Anthony	200
Lowe	200
Evins	250
Allen	400
Updegraff	250
Dowdney	200
Nutting	100
Message and documents (abridgment)—	
1887-'88	100
1890-'91	50
Melbourne Exhibition, 1888	40
Foreign Relations, 1890	300
Smithsonian Reports, 1883	50
Smithsonian Reports, 1887, part 1	50
Smithsonian Reports, 1887, part 2	75
Health, D. C., 1884	50
Navy Department, 1890-'91	50
Ordnance, 1890-'91	25
Commercial Relations, 1884-'85	100
Smithsonian Reports, 1889	300
Interior Department, 1890-'91, Vol. 2	150
Congressional Directories, second session Fiftieth Congress, 1st edition	200
Congressional Directories, first session Fifty-second Congress, 2nd edition	100
Copies—	
Amended tariff bill, Fifty-first Congress (pamphlet)	250
Ohio Mounds (pamphlet)	500
President's Message, first session Fifty-second Congress (pamphlet)	400
Statistical Abstract, 1888	150
Statistical Abstract, 1887	50
United States maps, 1885 (or No. 2)	18
United States maps, 1892	10
Total amount damaged	8,168

NOTES OF A HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON PUBLIC BUILDINGS AND GROUNDS, CONSISTING OF MESSRS. WARNER, SWEET, AND WARWICK, DESIGNATED TO INVESTIGATE THE RECENT FIRE IN THE FOLDING ROOM OF THE HOUSE OF REPRESENTATIVES.

STATEMENT OF GEORGE M. CRUICKSHANK, SUPERINTENDENT OF THE FOLDING ROOM.

WASHINGTON, D. C., *April 8, 1892.*

By Mr. WARNER:

Q. Describe the premises under your charge in the House of Representatives.—A. Referring to page 168 of the Congressional Directory, I would say that we occupy six rooms on the basement floor.

Q. How are they designated?—A. Four are designated here as number 68, and the others are not marked. This does not seem to be correct.

Q. Are the other rooms adjacent to No. 68?—A. No, sir; they are across the hall. We have two on the east side, and one on the west side.

Q. In what general part of the Capitol are they situated?—A. In the southern part of the central division of the Capitol, under Statuary Hall, the old House of Representatives.

Q. What other rooms do you occupy?—A. We occupy all the sub-basement under the old hall of the House, the whole of the south wing of the old Capitol portion of the building, and several of the vaults under the House of Representatives in the subbasement.

Q. Taking in order the rooms you have described, to what use are they put?—A. Two of the rooms, designated as 68 on the page referred to, are used for offices, and the small room is used by the superintendent and chief clerk. The large room and hallway are used by the clerks and bookkeepers. Those are on the basement floor. In the subbasement we have only one office, the foreman's office. Under the rooms designated as 70 we have a system of check books kept there. Those are the books in which we take receipts from the Post-Office Department in all matter delivered to them, and it acts as a check on the books up stairs. Those vaults in the subbasement are for storage purposes. In addition to those rooms I have particularly described, there are rooms under my charge used for the storage of books.

Q. How many volumes have you on hand at present?—A. There are about a million and a half on hand at the present time.

Q. Roughly estimated, how are they divided?—A. We have the more valuable ones upstairs and some of the more recent books that have come in in large bulk. The others are downstairs.

Q. Is there any division between those which you have frequent occasion to find and those which you do not have frequent occasion to find?—A. Our system is to store them in the piles, and each pile is a separate book. Some of them, like the Agricultural Reports, are so large that they are stored in several places, even the last edition.

Q. What is the general system of heating and lighting in the rooms

occupied by you?—A. The lighting is by gas and the heating is by steam.

Q. How high are the ceilings?—A. They are about 10 feet high in the subbasement.

Q. That is where the main part of your work is done?—A. Yes, sir.

Q. In the basement the ceilings are higher than in the subbasement?—A. Yes, sir.

Q. What was the date of this fire?—A. I think the fire was on the 22d of March, last.

Q. Where did it originate?—A. I think it originated under the room designated as No. 70.

Q. At what time did it occur?—A. The fire alarm sounded about 7 o'clock.

Q. State what you know about it, and where you were at the time.—A. I was at my boarding house on North Capitol street; I saw the fire department going by, and some one said that the engines had gone past in the direction of the navy-yard. I went back to my room; I did not go over to the Capitol, and hence I did not know anything of it personally until the next morning.

Q. Who did know of it personally?—A. I understand that one man from the folding-room got there. I could not say who it was.

Q. When did you first see the place where the fire was?—A. I saw it about 8:30 the next morning. I hurried over as soon as I heard there had been a fire.

Q. You are thoroughly acquainted with the general condition of the premises, the situation of the lights, the heating apparatus, and everything of that kind?—A. Yes, sir. I am not so familiar with the heating apparatus, though I know where it is, generally.

Q. Do you have any rules among your employés as to smoking?—A. Yes, sir; that is forbidden in the subbasement.

Q. How long has that been in force?—A. That was the rule which I found when I came here, on the 8th of January, last.

Q. Do you know whether or not it has been lived up to?—A. I do not know personally. I have never seen any smoking below there.

Q. How often have you had occasion to call attention to that rule?—A. I spoke to the foreman about it several times. One time I saw a man smoking in the hall way. I knew he had not been long from below, and he said he had not been smoking below.

Q. He was one of the employés?—A. Yes, sir.

Q. How did you come to speak to the foreman on the other occasion?—A. I remember that he showed me through the first time. What attracted my attention was the danger of these lights.

Q. What did you say to him?—A. I asked him about the number of the force, and everything, and I spoke about smoking. He said it was forbidden below.

Q. Did you see anybody smoking at that time?—A. I don't remember whether it was on that occasion; but on one occasion I saw a man smoking in the hall way. There is a small stone floor place at the west end of the hall way where the men have a water basin and where they go to drink, wash their faces, and eat their lunch. I saw a man smoking in there one day.

Q. What did you do about that?—A. I spoke to the man, and he told me he only smoked in there. His name was Davis.

Q. That was not the occasion which you mentioned before. Do you remember any other occasion?—A. No, sir; not until after this fire occurred, and then the morning papers had an account which was evi-

dently given by someone who had some idea of things there, as the article named the books that had been destroyed, and named some which were not in that part of the building. I thought I saw evidence that someone had given information to the paper. I asked him about this smoking, and he said that he had forbidden all smoking there, even in the wash room.

Q. How many employes have you?—A. They are divided. I do not know exactly, but I think about 45. A number are down in the annex; 11 or 12 are in the annex, and the remainder, some thirty odd, are in the House.

Q. How many volumes have you stored at the annex?—A. It is full. I counted a million and a half altogether.

Q. How many of that million and a half are here in the Capitol?—A. The greater part; more than a million.

Q. What inquiry did you make in regard to the sources of this fire?—A. I looked down in there and asked who was the last man off on that afternoon.

Q. Who was it?—A. A man named Moseley. I met Moseley down in the place where the fire was, called him to one side, and asked him about it. He said he had not been smoking there at all, and that he was there until a few minutes after 5 (which I knew to be the fact).

Q. You have mentioned Davis as one of the men who was smoking. Was Moseley the other?—A. Moseley is a new man.

Q. Who was the other man?—A. I don't remember. It was several weeks ago. It was probably along in January, as soon as I came into office.

Q. What did you do about it?—A. I inquired of Moseley what he thought about it, where the lights were, etc. He told me that he was not smoking, and he was satisfied nobody else had been; that the gas in a particular place had been put out; but that in another room adjoining and connected by a window there were two gas jets burning.

Q. What, if any, conclusion did you come to as to the probability of the manner in which that fire originated?—A. I could not trace it anywhere, and did not come to any conclusion. It is possible that a gas jet caused it, or that a match was lit by a rat gnawing at it.

Q. In regard to the gas jets, generally speaking, you are familiar with them and the way in which they are situated?—A. Yes, sir.

Q. In what condition is the subbasement, in regard to safety?—A. If it was my private property I would take better means to protect it from gas jets.

Q. In what particular regard?—A. I would have the gas jets better guarded, or have them removed and some other lights substituted. The gas jets are too close to the wall and too low down. In stacking those books they are apt to run higher than the gas jets.

Q. In other words, in attempting to store the number of books that you have stored there now it is convenient and practically necessary to pile the books so high as to be too close to the gas jets, or even above the gas jets?—A. Yes, sir. The order is not to let them come nearer than 2 feet to a gas jet.

Q. What means have you taken to ascertain the amount of damage caused by this fire?—A. I had the foreman make out, as nearly as he could, a list of the burned and damaged books. He has a good knowledge of what was stored there, and the number destroyed.

Q. Knowing the circumstances, do you believe it is possible in that way to make a pretty fair inventory?—A. Yes, sir.

Q. They were not completely destroyed beyond recognition?—A. No, sir.

Q. To what extent were books actually burned up?—A. The only books burned up were some in the bags on the floor.

Q. They had been laid out for some purpose, I suppose, and the number of them was known?—A. Yes, sir. There were some others which were on shelves, close to the fire, which were destroyed.

Q. About how many books had been there, and to how great an extent were they burned?—A. They were eulogies.

Q. How many, a thousand, or five thousand?—A. Probably five hundred.

Q. Mr. McKey, who has charge of that, knows the number that was there, and can inform us of the damage?—A. Yes, sir.

Q. In the main, what was the nature of the damage?—A. The books were scorched and soaked with water.

Q. So that they could be inventoried?—A. A great many of them could.

Q. What was the amount of the damage?—A. I get my information largely from Mr. McKey, and he told me that he thought it would amount to about \$1,000. It is now somewhat more, about \$1,200, as we subsequently found some water-soaked books that we had not seen before.

Q. Who, if anybody, would know about this matter?—A. Mr. McKey would know better than anyone, and there are two or three men who are familiar with it.

Q. Who are they?—A. I know a man very well, but I do not know his name; it is William somebody, from Texas. He is a folder. I have mentioned this man Moseley.

Q. Who was the man whom you mentioned as being in your employ and as having been on the premises when the fire broke out?—A. That was Moseley.

Q. How was the fire discovered?—A. I do not know that. I understand the discovery was made by one of the Capitol police.

STATEMENT OF J. M. M'KEY, FOREMAN OF THE FOLDING ROOM.

By Mr. WARNER:

Q. How long have you been employed in the folding room?—A. A little over eight years.

Q. In what position?—A. First as folder for four years, one year as messenger, and about three years as foreman.

Q. How many men are there employed in the House folding room?—A. Eleven.

Q. Under your supervision?—A. Yes, sir.

Q. How many volumes have you stored here in the building?—A. About 800,000 volumes.

Q. What rules, if any, have you as regards smoking?—A. Smoking has always been prohibited in the folding room.

Q. What do you mean by "in the folding room"?—A. All branches of it, the annex and the main rooms in the basement; the basement and the subbasement.

Q. Was it forbidden in the other rooms occupied by you?—A. Yes, sir; while on duty.

Q. Do I understand that this prohibition against smoking simply covers the time when the men are employed, or does it have refer-

ence to the place?—A. It has reference to the place; no smoking is allowed in the place, and it is strictly prohibited during working hours.

Q. A man is not allowed to smoke during working hours, and nobody is allowed in there smoking?—A. Well, people come in and out there—visitors—and have smoked there until requested to stop.

Q. When was that?—A. On several occasions; people will come in there now and then, and we have to request them to remove their cigars.

Q. People inquiring about documents?—A. Clerks to committees, and even members.

Q. How often do you have to call attention to that practice among the employés?—A. I do not know that I have ever had to do so.

Q. You have never noticed any infraction in that respect?—A. No, sir.

Q. How is it about visitors?—A. Probably three or four times a week I would have to call their attention to it. They are requested to stop smoking.

Q. If an employé was smoking in the rooms outside of the folding room, or those upstairs rooms, or in the room where they go to eat dinner or lunch, would you be apt to know it?—A. Yes, sir.

Q. Have you seen anything of that kind?—A. Yes, sir; on one or two occasions I have seen them light a cigar or cigarette at lunch time and step out into the area leading to the engine room. I have requested them not to do that. Sometimes they would light a cigar on leaving in the evening.

Q. Then you are mistaken when you say that you have had no occasion to speak to employés on the subject? What did you mean by that statement?—A. I mean during business hours while they were at work. I mean between the hours of nine and four, except when I spoke to them about lighting cigars.

Q. You never had general occasion to speak to the men about it; but on special occasions you did?—A. Yes, sir.

Q. You are familiar with the extent to which the rooms are heated and lighted, and with the premises where the fire did the most damage?—A. Yes, sir.

Q. At what time did the fire occur?—A. It occurred about 7:30 p. m., on the 22d of March.

Q. Who, if any, of your employés were present at that time?—A. None.

Q. Is there any watchman whose special business it is to attend to that part of the building?—A. No, sir.

Q. There was no one who would go there naturally?—A. No, sir; it was locked up.

Q. How was the fire discovered?—A. By one of the Capitol police.

Q. Where was he?—A. He was walking through the main corridor in the basement.

Q. Where was the fire?—A. In the subbasement.

Q. How great was the damage done?—A. I would estimate the loss to be about \$1,000.

Q. More or less than that?—A. Less, if anything.

Q. How did you make that estimate?—A. I am familiar with the books that were in the rooms at the time; and after everything was cleared I made an inventory.

Q. To what extent were books burned so as to be unrecognizable?—A. Not to that extent. There were no books that were unrecognizable.

Q. From the débris you could make an inventory as would enable

you to state with a considerable degree of accuracy the extent of the loss?—A. Yes, sir.

Q. If there is any indefiniteness about it how is it caused?—A. I don't know.

Q. Is it possible that there may have been some books that you do not yet know of?—A. No, sir.

Q. Have you a list of the books destroyed or damaged?—A. Yes, sir.

Q. And you can furnish us a copy of it?—A. Yes, sir.

Q. Please do so.—A. I can let you have it in an hour.

Q. From what you know of the condition of things about the office, and the habits of the employés, and everything of that kind, or any other circumstances connected with the matter, what is your best opinion as to how that fire originated? In the first place, state where it did originate.—A. I think it originated back of what we call the "order table."

Q. Where is that?—A. It is near the elevator, on the east front of the subbasement.

Q. Is it a place where much business is done?—A. Yes, sir; most all of the business is done there.

Q. Employés are continually running in there?—A. Yes, sir.

Q. Is that the place to which they would come?—A. Yes, sir; inquiring about orders.

Q. How often would people in the office be apt to come there?—A. Probably a dozen times a day.

Q. It might be more and it might be less?—A. Yes, sir.

Q. What makes you think it started there?—A. In the morning when I got there about 8 o'clock I found one gas fixture had fallen on the table where we had the orders filed. We have a file where we file orders for a month. This gas jet had fallen down where these orders were, and if the books fell on the gas jet they would have ignited.

Q. Is there a light burning there all night?—A. The light is burning there every night. We are apt to be called upon to go down there to look through orders to find out if they had been forwarded, or to find if they had come in.

Q. The light is not there simply for one man's convenience?—A. No, sir.

Q. But it is rather kept there for the examination of these files; and, therefore, the place has to be kept in such shape that files can be inspected by anyone connected with the office?—A. Yes, sir.

Q. As a matter of fact, there had been a light kept constantly burning down in that room?—A. Yes, sir; turned down low. The janitor has been requested to see that the lights are kept burning low.

Q. You are speaking now of the night?—A. No, sir. We stay there until Congress adjourns, and quit at 4 o'clock. At that time everybody leaves, and the gas is turned off in all the places, but it is left burning at the places where I have mentioned, as we are liable to be called on to go there.

Q. You mean that, no matter at what time Congress adjourns, you always have somebody there?—A. They generally stay there until half past 5.

Q. In that case a few of the lights, including those mentioned, would remain lit until the janitor turned them out?—A. Yes, sir.

Q. Is the janitor one of your employés?—A. Yes, sir.

Q. Did you ask him about it?—A. Yes, sir; he said the light was turned down low.

Q. What is his name?—A. Spencer Green, colored.

Q. What is the condition of those premises down there as to safety; and what suggestions have you to make, if any, in reference to that?—

A. I think if we had electric lights in the subbasement it would be a great convenience.

Q. Why so?—A. If a member sends an order down to us, say at half past 4 or 5 o'clock, one man has to take a candle or match and light fifteen or twenty gas jets in order to fill this order. If we had electric lights, they could be turned on at once, and it would not be necessary to carry matches or a lamp.

Q. Where are the books mostly stored?—A. In the subbasement.

Q. How high is the ceiling of the rooms in the subbasement?—A. $9\frac{1}{2}$ feet.

Q. They are highest in the center?—A. Yes, sir; they are $8\frac{1}{2}$ feet at the sides.

Q. As to the extent to which those rooms are filled with books, is there plenty of room?—A. They are pretty well filled.

Q. How high are they piled?—A. About $8\frac{1}{2}$ feet.

Q. As to the proximity of the books to the lights, what are the facts about it?—A. They are within 2 feet of the lights.

Q. They must be kept 2 feet away on either side?—A. Yes, sir.

Q. What have you to suggest as to safety? Do you consider the present arrangement a safe one?—A. I would suggest that the gas jets should be more central in the aisle. The jets extending from the side, or even the electric light, could be placed more centrally in the ceiling.

Q. They are on the sides now?—A. Yes, sir.

Q. How about the temperature, and the comfort of the men working there, and so on?—A. In some parts of the building the temperature is as high as 90° , and in others it is as low as 60° .

Q. In a large part of the place is that the case now?—A. Yes, sir.

Q. Without reference to the ordinary heating?—A. Yes, sir.

Q. How is it in the summer?—A. It is much higher, I presume. There is a draft in the main aisle.

Q. Are the rooms fairly comfortable or not?—A. We do not hear any complaint about that. The men seem to get along pretty well.

Q. How is it as regards the room in reference to the business done there; is it large enough?—A. The rooms are not large enough.

Q. Could you adopt a different rule than you have as to keeping books further away from the gas jets?—A. No, sir; it would be impossible.

Q. Have there been other fires in connection with the folding room?—A. Yes, sir.

Q. How many?—A. There have been four previous to this.

Q. About what were the dates, roughly?—A. There was one in 1884, one in 1887, one in 1889, one in 1891, and this one.

Q. What were the causes of those other fires?—A. The same cause as this one.

Q. Was there anything known definitely in reference to those other fires?—A. Yes, sir.

Q. What were the particulars?—A. On one occasion we found books against the gas jet.

Q. When was that?—A. Last February.

Q. On the last previous occasion what was the condition of things?—A. If I remember aright, I think a pile of books had fallen against the desk and close to a gas jet.

Q. And on the other occasions, what was the cause?—A. On one occasion it was neglect on the part of employés. They had left a candle burning—forgot to blow it out. On that occasion the damage was small. The candle burned down and set fire to a barrel of twine, which was almost consumed before discovered.

Q. Do you know what the other causes were, and how great was the damage on these two other occasions?—A. The damage was very small; it would not exceed \$50.

Q. What was done after this occasion in February? Describe that a little more definitely as to where it was.—A. It was in room No. 6, on the basement floor. It occurred about 7:30, and was discovered by a watchman in the hall. The door was burst open and the fire extinguished without much damage.

Q. The cause was that the books had fallen against the gas?—A. In this particular room the ceiling is high. The ceiling is high. The ceiling is probably 18 feet from the floor.

Q. That is in the basement?—A. Yes, sir. The books were piled up very high. They were left in that condition, and they leaned or sagged over so as to lean entirely against a gas jet.

Q. Have you any means of knowing how long that had been going on before it was discovered?—A. No, sir.

Q. Was it a room where anybody was stationed permanently?—A. No, sir. Men were coming in and going out three or four dozen times a day.

Q. Was there any particular man whose business it was to look after that room?—A. No, sir.

By Mr. SWEET:

Q. Mr. Cruickshank, in his statement, said that he could account for this fire in but two ways; one was from the gas jet, and the other way was that a rat might have been gnawing a match. Is there any special care taken with reference to keeping matches down there?—A. No, sir. When we are compelled to go down there we have to take matches. It might have been possible that it was caused by a match, or it may have been caused by rats gnawing a match. Possibly the latter was the origin of it.

By Mr. WARNER:

Q. How about rats; are there many down there?—A. There are a great many there.

Q. Do they eat the books?—A. No, sir. Sometimes we find that they have been gnawing at the wrappers to get the paste.

STATEMENT OF T. G. MOSELEY.

By Mr. WARNER:

Q. What is your business?—A. I am in the folding room.

Q. What do you do down there?—A. I am in the order room.

Q. Was that at or near where the fire originated?—A. Yes, sir; it originated near there.

Q. Where is the order room?—A. It is on the east side of the sub-basement occupied by the House folding room.

Q. Are you working in that room?—A. Yes, sir.

Q. How late are you there?—A. I think until about 5 o'clock in the afternoon.

Q. You then leave?—A. Yes, sir.

Q. In what condition did you leave matters there?—A. I left the order room with all the gas out in the order room, except on the desk where we file our orders, and at that place the gas was turned down low.

Q. The gas would be left burning on that desk naturally?—A. There was a pile of orders that had been filled. They were piled up 4 feet high, and the gas jet hangs 2 or 3 feet from the desk.

Q. The gas jet hangs rather low over them?—A. Yes, sir.

Q. How far would the top of the pile of books be from the bottom of the gas jet?—A. It would be 2 or 3 feet.

Q. Do you remember how it was left at that particular time? You have been describing how they were piled up.—A. There was a great pile of orders that had been filled. As the month goes along the pile of orders will grow with it; and I think it was toward the end of the month when the fire happened. We would naturally have a pretty good pile of orders at that time in the month.

Q. When did you first hear of the fire?—A. In the morning.

Q. Have you any impression how the fire originated; or do you know anything of the circumstances?—A. When I looked at it the next morning, my impression was that the gas jet dropped. It was down on the table. All those orders had been burned up, and it looked as if the fire was caused by the draft that naturally goes through the main corridor through the window to the westward.

Q. That was where the main damage was done?—A. It was.

Q. That is all you know about the fire?—A. Yes, sir.

Q. How long have you been here?—A. About two months.

STATEMENT OF SPENCER GREEN.

By Mr. WARNER:

Q. What is your business?—A. I am janitor to the House folding room.

Q. In whose employ?—A. Under Mr. Turner.

Q. You are not under the janitor of the Capitol?—A. No, sir; I am under the Doorkeeper.

Q. Is Mr. Turner in town now?—A. No, sir.

Q. Is it your business to clean out those rooms in the subbasement and in the folding room?—A. Yes, sir.

Q. Did you clean them out on that particular night?—A. Yes, sir.

Q. About what time?—A. Half past 4 to 5 o'clock.

Q. You are pretty well acquainted with those rooms?—A. Yes, sir.

Q. How long have you been there?—A. Since the first of January, this year.

Q. How are you instructed to leave those rooms?—A. I am instructed to turn out the gas all over the building, with the exception of one or two burners.

Q. Is this burner one of those which it is not your business to turn out?—A. I have orders to leave one burning. That is one in the hall.

Q. All the gas is turned out in the order room?—A. My order is to leave one gas burning in the order room.

Q. And that you did leave burning?—A. Yes, sir.

Q. Do you know anything else about it?—A. Nothing particular.

Q. Ordinarily, that would be left burning?—A. Yes, sir. I have a man to assist me. He cleans up one part, and I clean up the other.

Q. Which did he clean?—A. I cleaned the western part, and he cleaned the eastern part.

Q. When did you first know of this fire?—A. The next morning.

Q. Did you ask the other man about how he left his part of the room?—A. Yes, sir. He said he left it in right shape.

Q. It would have been perfectly right for him to have left one gas jet not turned off?—A. I think it is the custom. He was there before I came in. He was here under my father-in-law for about two years. My father-in-law was here for thirty-three years.

Q. Do you know how the fire was discovered?—A. No, sir, I do not. I haven't the slightest idea.

Q. Did you go down there and look at it?—A. Yes, sir.

Q. It looked bad?—A. Yes, sir; it looked right bad.

Q. Where did it seem to have started?—A. In this part of the folding room.

Q. In the order room?—A. Yes, sir; in the order room.

Q. How about smoking down there?—A. There is no smoking down there. Smoking is positively prohibited down there.

Q. Do you have reference to the folding room now?—A. I don't know about the folding room.

Q. Do you work in the folding room?—A. No, sir.

Q. How about the other people smoking?—A. I don't know.

Q. Did you ever see any smoking there?—A. Yes, sir; I saw a man smoking there once, and I told him it was dangerous. I have nothing to do with the rules down there.

Q. You thought it was dangerous to smoke down there?—A. Yes, sir; I knew it was.

Q. Who smoked mostly, the employés, members of Congress, or clerks?—A. I don't know, sir.

Q. They all do it a little?—A. There was not very much smoking there.

Q. Who was it done by mainly?—A. I couldn't name anybody particularly, sir. They don't allow anybody to smoke there.

Q. That was the rule?—A. I think that was the rule about smoking.

Q. But they would smoke once in awhile?—A. Well, I guess they would get in a pop once in awhile.

Q. You did not say anything about that.—A. I hadn't anything to say about that, but I spoke to one young man.

Q. What did he do?—A. He did not do it any more.

Q. When you told him that it was not right he did not do it?—A. No, sir.

Q. Do you know who he was?—A. I don't know his name, but I know his face.

Q. What did anybody else say about it?—A. I never spoke to anybody else. Most of them are older there than I am.

Q. There was a watchman who discovered this fire?—A. In the morning when I came there, there was a watchman in the room. I saw the room open, and I said "What's this about?" and he says, "It's been open all night. They have been trying to burn the Capitol down." The man who was with me cleaning the rooms is named Gum.

COMMITTEE ROOM ON BUILDINGS AND GROUNDS,
Washington, D. C., Tuesday, April 26, 1892.

The subcommittee appointed to investigate the origin of the recent fire in the basement of the Capitol this day met, Hon. John DeWitt Warner in the chair.

TESTIMONY OF ERASTUS GREEN.

ERASTUS GREEN sworn and examined.

By the CHAIRMAN:

Q. Where do you live?—A. Alexandria, Va.

Q. What is your occupation?—A. I am a laborer doing odd jobs for regular employes about the Capitol.

Q. Do you remember the fire which occurred in the Capitol recently? If so, state what you may know about it.—A. I remember the fire in the folding room about the 20th of March last; it was about 6 o'clock in the afternoon, or later, maybe 7 o'clock; I had been working on the floor of the House, and on going down in the basement saw smoke in the central hall in the direction of the Senate end; others had seen it, too, and we rushed toward it; it seemed to come out of the folding-room door, so I ran in there and through the folding room downstairs; the smoke got thicker all the time; when we got into the subbasement the most of us ran off to the west, but the barkeeper of the House restaurant and myself went to the east and found the fire in the cross-corridor, or just west of the order room; it was blazing out pretty well; it was as big as a barrel or bigger; I ran upstairs for an ax to break in the outside door of the elevator; that was because I could not get past the fire and so reach the elevator from the subbasement; I could not find any ax, and then ran outside to where the elevator doors opened outward. While I was at work at that the fire engines came; the firemen opened the front door, broke open the elevator top and got a hose in that way; when I first saw the fire it seemed to be a blaze from a pile of books, but it was very smoky there, and on account of the smoke and heat it kept me from getting forward; the fire was put out in half an hour or so, and several of us stayed about all night putting out sparks and getting books out of the wet.

Q. Nothing more occurs to you which would throw any more light upon the subject?—A. No, sir.

APRIL 27, 1892.

STATEMENT OF GEORGE C. GUM, OF 326 A STREET SE.

I am employed as a Capitol policeman. I was on duty on the afternoon of March 22, at the crypt, in the subbasement, under the rotunda. About 6:45 I was to go off duty, and I smelt something burning, apparently toward the south; and going in that direction, I found smoke in the hallway opposite the folding-room door, and saw smoke coming out of a transom between the cross corridor and the folding room. I climbed up to the transom and saw that the room inside was filled with smoke, and then I jumped down and broke open the folding-room door. The lieutenant of the Capitol police was there. He helped me to break down the door, and I went to look for the fire while he went to telephone for the firemen. By that time others had come up, but I was the only man who went downstairs at once. I followed in the direction whence the smoke appeared to come, and found the east cross corridor near the elevator filled with smoke. I went in and could feel that there was a fire near the floor, but the smoke was so thick I could not see and I had to come back to get my breath. I then made a sec-

ond attempt to get past the fire and to a gas jet which was hanging over the desk in the order room. As I passed, the fire seemed to be in the room to the west of the order room and to the north of the cross corridor. I then ran back up through the folding room and went out through the crypt until I reached the door which opens from the sub-basement, at the west end of the cross corridor I have mentioned, and went out on to the lawn at the west side of the Capitol. With others, who aided me, I broke open the door and stooping down, I saw the fire right where I had been at first, near the east end of the cross corridor. It seemed like a blaze rising from the floor, and there was a pile of papers burning on the floor. While we were working at the fire the fire engines came.

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AMENDING SECTION 19, ACT TO REGULATE COMMERCE.

MAY 21, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. RAYNER, from the Committee on Interstate and Foreign Commerce,
submitted the following

REPORT:

[To accompany H. R. 7215.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 7215) to amend section 19 of an act entitled "An act to regulate commerce," have fully considered the same and report it to the House with the recommendation that it do pass, with the following amendments, to wit:

In line 16 between the words "appointed" and "by" insert the words "from its clerical force."

In line 17 strike out the words "every such agent," and substitute the words "said agents."

After the word "oath" in line 19 insert the following:

and upon the presentation of their reports the Commission shall have the power to act thereon as if it had conducted the examination. Said agents shall, in addition to their legal salaries, be paid their necessary traveling and hotel expenses while engaged in the prosecution of the inquiries provided for in this act.

Under the provisions of the bill the commission is authorized, in the exercise of its discretion, to send an expert special agent to any part of the United States to prosecute the inquiries which one or more of its members are empowered to make under the existing law.

If the Commission deems it necessary to inquire into any question of fact pertaining to the business of any common carrier, it must either go in a body or depute one or more of its members to visit the place where such inquiry is to be made. The committee believe that the passage of the bill will afford great relief to the Commissioners in the transaction of their business by relieving them of the necessity in many instances of leaving Washington for distant places, thereby enabling them to devote more time to the business before them, and that it will reduce the expenditures of the Commission, as the special agents to be appointed must be detailed from the clerical force already employed and only receive their necessary traveling expenses while engaged in the prosecution of the inquiries provided for in the act.

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LIGHT-HOUSES AND OTHER AIDS TO NAVIGATION.

MAY 21, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BRICKNER, from the Committee on Interstate and Foreign Commerce submitted the following

REPORT:

[To accompany H. R. 8007.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 8007) providing for sundry light-houses and other aids to navigation, have had the same under the most careful and painstaking consideration and report it back with the recommendation that it do pass.

The committee desire to state:

(1) That this bill is practically a substitute for all other bills relating to the same subject which have been referred to it and are now before it.

(2) That every item of this bill meets the approval of the Secretary of the Treasury and of the Light-House Board.

(3) That the approval of the Secretary of the Treasury and of the Light-House Board are indicated in the various communications hereto attached and printed; and that for the convenient examination of the bill by the House, the numbering of the clauses of the bill is made to correspond with the numbering of the paragraphs of the letter of the Acting Secretary of the Treasury of March 8, 1892, up to No. 48, and with the additional numbering of the other various communications of the Treasury Department hereto subjoined.

(4) That if the bill does not seem to be based upon the reports of the Treasury Department in the respect that the words "a fog signal" are used in the bill wherever "a steam fog whistle" seems to be indicated by the Light House Board as the proper thing, it is only because it is the later and better view of that Board as set forth in advices to this committee of April 16, 1892, that the bill ought to exhibit such a change.

Experiments made, so says the Board, at the general depot at Staten Island, seem to show that a signal fully as effective as the steam whistle may be had at a very much less cost of maintenance and greatly reduced operating expenses. It is true that the Board is not now prepared to say that these new machines are all that is hoped from them, but their full value will be known long before the stations are ready to receive them.

It will not prove uninformative, in the opinion of your committee, if we quote further from the advices referred to as follows:

The exceedingly narrow construction of the letter of the law by the accounting officers of the Treasury Department, without any regard to its spirit, would prevent the adoption of the new apparatus, no matter how cheap to put in, how inexpensive to run, or how safe for use in the buildings, as compared with the steam whistle. The accounting officers hold that the Board may not economize Government funds by putting in a better and less expensive apparatus than the bill says.

Your committee intend no criticism of its own by this quotation upon the accounting of the Treasury Department, nor, on the other hand, will it stop to make a disquisition upon the necessity of strict construction of and adherence to the law. It is far more practical in this case to provide in the law itself for the discretion which is sought for by the Board, which seems to be a reliable institution with proper aims and business-like methods of procedure.

Your committee desires to add that you have appropriated largely and, doubtless, wisely to the improvement of rivers and harbors and to the consequent facilitation of commerce. It would be a curious concomitant of this state of facts if, while you are deepening the channels of your water ways and rendering not only possible but probable a vast increase in the tonnage and number of the vehicles of interstate and foreign transportation, you should refuse to life and property thus encouraged to venture the requisite means of safe conveyance or remit them to the dangerous and unreliable protection in not a few cases of lights and signals established by private enterprise and kept up at private expense.

We have no right to make the people take a leap in the dark, run the chances of the tortuous channel, and brave the hazards of the aggressive shoal with their eyes closed. We must not lead them into the wilderness of the waters and leave them without a pathway marked either backward or forward. We should not deepen the depths without making provision against falling into them. But whether you spend for rivers and harbors or not, it is absolutely necessary to light the ways of commerce by other means than those which nature provides, in the great interest of the salvation of life and property. On behalf of such measure of justice as is just now attainable to the toilers of the sea, this bill should pass Congress and greater sums must be spent hereafter. Meantime your committee claim to have given careful consideration to the condition of the Treasury.

TREASURY DEPARTMENT,
Washington, D. C., March 8, 1892.

The CHAIRMAN OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
House of Representatives, Washington, D. C.:

SIR: The letter from the House Committee on Interstate and Foreign Commerce of January 21, 1892, transmitting for suggestions as to its merits and as to the propriety of its passage, House bill No. 3862, authorizing the establishment of sixty-four different aids to navigation on the Great Lakes, was on its reception referred to the Light-House Board for consideration and report.

It was duly considered by the Light-House Board at its session on 7th March, item by item, and returned with a report in detail, as follows:

LAKE ONTARIO.

1. "On Galloo Island, a fog signal, at a cost not exceeding five thousand seven hundred dollars."

This was recommended in the Light-House Board's Annual Report for 1891, on p. 134:

"This is an important light near the lower end of Lake Ontario. It marks the outer edge of a group of islands and numerous shoals before reaching the St. Lawrence River, or on the way to Sacketts Harbor. Vessel men need to locate this light as soon as possible; as fog and thick weather frequently prevail, especially in the autumn, its position should be made available by a fog signal. It is therefore recommended that a steam fog signal be established at this station, at a cost not to exceed \$5,700, and that an appropriation of that amount be made therefor."

2. "On the head of Carlton Island, a light-house, at a cost not exceeding eight thousand six hundred dollars."

This was recommended in the Light-House Board's Annual Report for 1891, on p. 133:

"Several petitions for the establishment of a light on this island have been received the past eight years, notably in 1883 and in 1888, but on each occasion has been made the subject of an adverse report. The number and size of the vessels used in the navigation of the St. Lawrence River has increased yearly. The character and demands of this trade have also changed, and where heretofore vessels would lay up rather than make night passages, they are now compelled by close competition to economize time and do so. The channel for large vessels near Carlton Island crosses from the American to the Canadian side, and is both dark and obscure. The establishment here of a small light station, similar to that at Cross Over Island, St. Lawrence River, at a cost of \$8,600, is suggested, and an appropriation of that amount is recommended therefor."

3. "On Bay State Shoal, at the cross-over, floating lights, at a cost not exceeding eight hundred dollars."

This was recommended in the Light-House Board's Annual Report for 1891, on p. 133.

"This shoal, and Oak Point Shoal, which is adjacent, are well marked with buoys, which serve for crossing by daylight. The current striking vessels broadside on carries them down toward the shoals, making it difficult for them to hold their course unless the pilot has the aid of the buoys. At night, therefore, the crossing is especially difficult, and lights are needed. The act of August 2, 1888, for improving rivers and harbors, authorized a survey and examination of these shoals with a view to their removal. It is probable that an appropriation will be made for that purpose, and that lights will be required here but for a few years. As the need for vessels to cross during the night is increasing each year, it is recommended that these shoals be marked by two temporary floating lights. It is estimated that two small flats, complete with masts, anchors, etc., with two sets of lantern lights, will cost \$800, and it is recommended that an appropriation of that amount be made therefor."

LAKE ERIE.

4. "On the breakwater at Buffalo, a fog signal, at a cost not exceeding four thousand three hundred dollars."

This is recommended in the Light-House Board's Annual Report for 1891, on p. 136:

"A bell is used as a fog signal at this light station. It is ineffective. It is therefore suggested that it be replaced by a steam fog signal at a cost not exceeding \$4,300, and it is recommended that an appropriation of this amount be made therefor."

5. "At the entrance to Erie Harbor, Pennsylvania, a fog signal, at a cost not exceeding four thousand three hundred dollars."

This was recommended in the Light-House Board's Annual Report for 1891, on p. 137:

"A bell is used as a fog signal at this light station. It is ineffective. It is therefore suggested that it be replaced by a steam fog signal at a cost not to exceed \$4,300, and it is recommended that an appropriation of this amount be made therefor."

6. "At Fairport Harbor, Ohio, a fog signal, at a cost not exceeding four thousand three hundred dollars."

This was recommended in the Light-House Board's Annual Report for 1891, on p. 138:

"The pier being extended lakeward for 80 feet it is proposed, when practicable, to move the beacon near to the outer end of the newly made pier and to prolong the walk to the beacon. A bell is used as a fog signal at this light station. It is inefficient. It is recommended, therefore, that it be replaced by a steam fog whistle, at a cost not to exceed \$4,300, and that an appropriation of that amount be obtained therefor."

7. "At Lorain Harbor, Ohio, a fog signal, at a cost not exceeding four thousand three hundred dollars."

A steam fog signal at this point would be of great local value. It is reported that the commerce here during the year 1890 was 539,249 tons. The Light-House Board recommends the establishment of this fog signal.

8. "On southerly end of South Bass Island, to range with Green Island light and Marblehead light, a light at a cost not exceeding eight thousand six hundred dollars."

This light has heretofore been recommended by the Light-House Board under the name of South Bass Island. The recommendation is as follows:

"This passage is much used in place of the north passage by vessels bound to and from Sandusky and Marblehead, or to Toledo from the east, and during heavy blows from the northwest. There are several dangerous shoals in it, which are only marked for daylight passage, and such passages are not always practicable; hence night passages are becoming necessary. It is therefore recommended that a light

be established on the southerly end of South Bass Island, to range with Green Island light and Marblehead light, at an expense not to exceed \$8,600, and that an appropriation of that amount be made therefor."

9. "For reestablishing light at Port Clinton, Ohio, at a cost not exceeding one thousand five hundred dollars."

There is here a small local commerce. Among its vessels are eight or ten fishing tugs which constantly run in and out of the harbor. There is now no light to guide them in, the former light having been discontinued. The old light-house, which is still standing on the pier, could be put in repair and fitted up for the sum named in the bill.

10. "For moving range lights, Maumee River, Ohio, so as to properly light the new channel, at a cost not exceeding eight thousand dollars."

The following recommendation is from the Light-House Board's Annual Report for 1891:

"This channel, when completed, will be about 8 miles long. The axis of the improved channel is the line marked by the main range crib light and the east range crib light now established in Maumee Bay. These ranges will serve to make a part of the new channel, but additional ranges are needed to mark the inner end of the channel. The portion of the new channel inside the location of the crib ranges is practically completed so far as excavation is concerned, and it was regularly buoyed out last spring so that it is now used by vessels. The rest of the new channel will be excavated this fall. That portion of the old channel marked by the middle and outer range lights is now but little used by vessels entering the harbor of Toledo. It is therefore recommended that range lights be established to light the straight channel in Maumee Bay, to be located near the mouth of Maumee River on the shore near Grassy Point, and to consist of a front range in shallow water, built of iron on a pile foundation, and of a rear range, also to be built of iron, to be located on the land on a lot sufficiently large to afford a site for the keeper's dwelling and other needful buildings. It is estimated that these will cost \$8,000, and it is recommended that an appropriation of this amount be made for that purpose."

DETROIT RIVER.

11. "For a light-ship of suitable pattern, to take the place of the private light-ship now maintained by vessel-owners at Bar Point, and to be located in American waters at a point to be determined by the Light-House Board, at a cost not exceeding twenty-five thousand dollars."

The board is strongly of the opinion that a light-ship should be established, at a cost not exceeding \$25,000.

12. "At Limekiln Crossing, Detroit River, floating lights near the northwestern and southwestern corners of the cut, to replace private lights now maintained at those points by vessel-owners, at a cost not exceeding one thousand dollars."

It is understood that this cut is ultimately to be widened. Hence, while it is necessary that the corners of the cut be lighted, it is desirable that it should be done in a temporary and inexpensive way. Proper floating lights can be prepared in numbers sufficient to replace lights run down or destroyed for not exceeding \$1,000. The Board gives its favorable recommendation.

13. "At Ballard's Reef, Detroit River, a light-house with a fog signal on a caisson, to replace private lights at this point, at a cost not exceeding thirty-five thousand dollars."

The Board is of opinion that it will be better to place a light-house with a fog signal on a caisson here rather than to locate a light-ship here, as the running ice would be likely to either sink her or drive her from her moorings. A light-house can be erected on a caisson in such manner as to resist the ice, as has been done at other like places. It would, however, cost, say, \$35,000, and it is recommended to provide \$35,000 for that purpose.

14. "On Grosse Isle, Detroit River, range lights to mark the center line of the channel from the foot of Fighting Island to Mamajuda light, at a cost not exceeding two thousand five hundred dollars."

The middle of the channel from Ballards Reef to the south end of Fighting Island is now marked by a range on Grosse Isle. The Mamajuda light is but a mile above the point where that range leaves the middle of the channel. The Board recommends that another range be established on Grosse Isle opposite the south end of Fighting Island to keep vessels off the spits on the west side of Fighting Island and to mark the turning point in the river between Fighting Island and Grosse Isle.

15. "On north end of Mamajuda Island, a light to range with the present light on Mamajuda Island, to mark channel between Grassy and Mamajuda Island, at a cost not exceeding one thousand five hundred dollars."

The Board is satisfied that these range lights are needed, and it recommends that

the proper measures be taken for their establishment. The sum provided in the clause above mentioned is deemed sufficient for the purpose.

16. "For range lights above Grassy Island, Detroit River, at a cost not exceeding two thousand five hundred dollars."

The Board is satisfied that these ranges are needed, and it recommends that the proper measures be taken for their establishment.

LAKE HURON.

17. "On Poes Reef, Straits of Mackinaw, a light-ship of suitable pattern, at a cost not exceeding twenty-five thousand dollars."

This dangerous reef runs out from the southeastern point of Bois Blanc Island, and on it many vessels have met disaster. The entire commerce of the Straits of Mackinaw, said in 1890 to amount to 11,222,000 tons of freight, passes dangerously near this reef, and this is particularly the case with vessels bound to or from Detour. This is owing, in a large measure, to the nearness of the reef to deep water and to the heavy runs of ice in the straits during a large portion of the year. The construction of a light-house on the reef would be costly, as it would have to be sufficiently strong to resist the push of the ice. A light-ship would be preferable to a light-house here, as a light-ship can be shifted from place to place within certain limits, as circumstances may require, and as it can be brought in and put out of commission and out of expense while navigation is closed by solid ice. The Board therefore recommends the placing of a light-ship of suitable pattern, at this point, at a cost not exceeding \$25,000.

18. "At Forty Mile Point, a light and fog signal, at a cost not exceeding twenty-five thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 147:

"This point is understood to mean Hammond Bay, which is 40 miles to the eastward of McGulpin Point light-house. Cheboygan and Presque Isle light-houses are about 50 miles apart, with no aid to navigation between them. Considering the magnitude and value of the commerce of this vicinity the distance unmarked by a light is far too great. A light station is needed about midway between the two. It should have not only a fog signal, but also an efficient coast light. The proper location for this is on the prominence of the coast eastward of Hammond Bay, about equidistant between Cheboygan and Presque Isle. The cost of the station complete would be about \$25,000. It is recommended, therefore, that a light and fog-signal station be established about midway between Cheboygan and Presque Isle light stations at such a point as the Board may fix upon on further examination, and that an appropriation of \$25,000 be made therefor.

The Board renews the recommendation.

SAINT MARYS RIVER.

19. "For moving Saint Marys ranges, at a cost not exceeding two thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 148:

"The conditions in the vicinity of Round Island and Point Iroquois, St. Marys River, are unsatisfactory to navigators of these waters. Owing to the insufficient depth and the narrowness of the passage, which is but a quarter of a mile wide between the 11-foot shoals bordering the channel on the St. Marys River upper range, the greater number of vessels prefer to hold the lower range until they can change course in deep water westward of the shoals. In fact, the channel through the St. Marys River upper range was barely navigable until a cut had been dredged, which is now partly filled up, and with any sea a deep vessel can not use it. In addition to these obstructions, there are several others near to the 6-fathom contour between Round Island and Iroquois Point, which are brought out by drawing the 18-foot contour. The largest has but 14 feet on it. These are now insufficiently marked by buoys. An effective guide past all these is needed. The Board suggests that all these be furnished by laying out a new range on shore. This can be done most economically by abandoning the present upper range and moving the buildings to the new line, after which the St. Marys River lower range should be shifted slightly to the southward to clear the 10-foot lump now marked by the red can buoy. The cost of doing this would be about \$2,000. The Board recommends that an appropriation of that amount be made therefor."

The Board renews the recommendation.

LAKE SUPERIOR.

20. "At or near Grand Marais, a light and bell, at a cost not exceeding fifteen thousand dollars."

There is no harbor between White Fish Bay and Grand Island. Grand Marais has been for some time under improvement by the United States as a harbor of refuge,

and the work has now advanced to a point where it is desirable to light it. It is believed that a suitable light and bell can be placed here for the sum named, and the Board recommends that it be done.

21. "At or near Big Sable Point, a steam fog signal, at a cost not exceeding five thousand five hundred dollars."

This important light station is on the southern shore of Lake Superior, about half way between Marquette and White Fish Point. The entire traffic of Marquette, which, it was stated, was, in 1890, some 1,772,400 tons, passes close to this station, and in time of southerly gales the whole commerce of Lake Superior hugs the south shore. A steam fog signal is required to complete the satisfactory equipment of the station. The Board recommends that it be established.

22. "At or near Big Bay Point, between Granite and Huron islands, a light and fog signal, at a cost not exceeding twenty-five thousand dollars."

This point lies about half way between Marquette and Portage Entry. It is a projection of the coast line about half way between Marquette and Keweenaw Bay. There is a harborage on each side of the point with certain winds, and abreast the point the coasting steamers make a change of course. It also occupies a midway position between Granite Island and Huron Island, the distance in each case being about 15 to 18 miles. These two lights are invisible from each other and the intervening stretch is unlighted. A light and fog signal would be a protection to steamers engaged in passing between these points. They include all the Lake Superior passenger steamers running between Duluth, Buffalo, and Chicago which carry package freight and stop between all the important points on the south side of Lake Superior, including Marquette and the copper ports on Portage Lake. Quite a number of vessels have in past years been wrecked on Big Bay Point. The Board therefore recommends that this light and fog signal be established.

23. "At or near Mendota, Bete Grise Bay, reestablish light and bell, at a cost not exceeding seven thousand five hundred dollars."

Vessels west bound try in the fall to use this point as a harbor of refuge in which to await fair weather before attempting to make the passage around Keweenaw Point. The light formerly there was discontinued in 1870, because of the failure of the local business, and the light-tower was moved to and used at Marquette Breakwater. The keeper's dwelling, however, remains at Mendota. With the increase of shipping on Lake Superior, Bete Grise Bay is being largely used by day as a harbor of refuge in gales from the north to the southwest, but at night it is now almost inaccessible. If a light is placed near the head of the bay, it will be of marked advantage in guiding vessels after dark to a safe anchorage. It can be established for the sum named in the bill. The plan, therefore, has the Board's favorable recommendation.

24. "At or near Eagle Harbor, a fog signal, at a cost not exceeding five thousand five hundred dollars."

This was recommended in the Board's Annual Report for 1891, on p. 149:

"A steam fog signal would be a valuable addition to the light station at this point. It can be established for \$5,500, and the Board recommends that an appropriation of that amount be made therefor."

The Board renews the recommendation.

25. "At or near Sand Hills, twelve miles east of Eagle River, a light, at a cost not exceeding twenty thousand dollars."

26. "Eagle River light to be discontinued."

Vessels bound east from the head of Lake Superior first make the land and commence to turn in rounding Keweenaw Point at the Sand Hills, 12 miles west of Eagle River. This point is half way between Eagle Harbor and Ontonagon, and is 7 miles southwest of Eagle River. There is now a light at Eagle River, but it has outlived its usefulness. The local traffic of the place has stopped. It has no commerce and no harbor. There is no longer reason for continuing the light there, except as a coast light, and it is not sufficiently powerful to serve that purpose. It is proposed, therefore, to move the light from Eagle River, where it is of no use, to Sand Hills, where it would be of great service. This can be done for the sum named in the bill. The plan, therefore, has the Board's favorable recommendation.

27. "At Portage Lake ship canal, a fog signal, at a cost not exceeding five thousand five hundred dollars."

The United States Government during the past year has purchased these lake canals at a cost of \$350,000. The light at the entrance to the canal should be supplemented by a steam fog signal to enable it to subserve this purpose during thick weather when the light can not be seen. A fog signal can be established here for the sum named in the bill. The plan, therefore, has the Board's favorable consideration.

28. "At or near Fourteen Mile Point, a light and fog signal, at a cost not exceeding twenty thousand dollars."

This prominent point is about 15 miles east of Ontonagon Light, at about the limit of its visibility. There is no light in the southwest direction until that at Portage Lake ship canal is reached, a distance of more than 40 miles. A new coast light is needed here in the interests of a large commerce to and from Ashland Bay. All this commerce passes directly by Fourteen Mile Point on the way to and from Keweenaw Point. A light and fog signal can be established here for the sum named in the bill. The plan, therefore, has the Board's favorable recommendation.

29. "For moving main Chequamegon Light and establishing fog signal, at a cost not exceeding seven thousand five hundred dollars, and for harbor light and bell, Chequamegon, at a cost not exceeding two thousand five hundred dollars."

This was recommended in the Board's Annual Report for 1891, on p. 149:

"A light on the east side of the entrance to Chequamegon Bay has been in service since 1858, and the act of October 1, 1888, authorized a fog signal at a cost of \$5,500, and on March 2, 1889, an appropriation was made therefor. This additional aid is much needed. In order, however, to fully meet the requirements of the situation, further improvements are needed. The present light is not near enough to the inner point to serve as a good guide to clear it, and it is too far from the course of vessels outside to be of the best advantage. The fog signal should be on the outer beach, about 1 mile east of the present light, and if so established the light also should be moved to the same location. To mark the inner point toward Houghton a small harbor light and fog bell struck by machinery will meet all requirements.

"The expenditures necessary are estimated as follows:

For removing and rebuilding the main light.....	\$7,500
For the harbor light and bell	2,500
Total estimated cost	10,000

"The Board recommends that an appropriation of \$10,000 be made therefor."

The Board renews the recommendation.

30. "At Devil Island, to complete light station, at a cost not exceeding twenty-two thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 150:

"The act approved March 2, 1889, appropriated \$15,000 for building a light station, and the act approved March 3, 1890, appropriated \$5,500 for establishing a fog signal to complete the station to be erected on Devils Island. The appropriation for the light was insufficient. Devils Island is an isolated station with no adequate harbor. The light, which is to be flashing and of the third order, will become one of the most important turning points in Lake Superior. In addition it is to have a fog signal, and provision must be made, therefore, for not less than three keepers. The station, exclusive of the fog signal, is estimated to cost \$35,000, leaving an additional appropriation of not less than \$23,000 to be made after paying for the land and other contingent expenses. In view of the improbability of securing the additional amount needed at the current session of Congress it was decided that, pending action in this regard, a temporary skeleton frame tower should be built to prevent further delay in exhibiting the light, and, while awaiting the arrival from France of the third-order flashing lens required, to exhibit a fixed red light of the fourth order. The building of the duplicate fog-signal boilers and machinery was in progress under contract at the end of the year. An addition of \$22,000 is needed for furnishing the station with a permanent tower, and it is recommended that this amount be appropriated for that purpose."

The Board renews the recommendation.

31. "At Bayfield, a pier light and bell, at a cost not exceeding five thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 150:

"The increasing commerce of the place and the fact that this is one of the best and largest harbors of Lake Superior make it evident that a light should be established here. It is estimated that this can be done for a sum not exceeding \$5,000, and recommendation is made that an appropriation of this amount be made therefor."

The Board renews the recommendation.

32. "Superior Bay lights, at a cost not exceeding one thousand two hundred dollars."

This was recommended in the Board's Annual Report for 1891, on p. 150:

"The channel in Superior Bay from the natural entrance to Connors Point should be so marked that vessels can get in or out after night without aid from tugs. It is claimed that over nine hundred vessels will have arrived and cleared from this port this year with a commerce exceeding \$28,000,000 in value. The largest line of steamers on the lakes makes its headquarters here. The Board is of opinion that this channel can be sufficiently marked by lights shown from lanterns, mounted on six clusters of piles, which will burn from five to eight days without trimming, if

need be. These can be built for, say, \$200 each. The Board therefore recommends that an appropriation of \$1,200 be made therefor."

The Board renews the recommendation.

33. "At Pats [or Hat] Point (near Grand Portage), a light and fog signal, at a cost not exceeding fifteen thousand dollars."

Pats (Hat) Point is a headland with deep water on each side of it which forms a harbor of refuge for vessels in heavy northwesterly gales. Vessels in heavy northwesterly winds hug the north shore of Lake Superior and thus make smooth and safe water. The proposed light station will constitute both a coast light and a guide into two excellent harbors which exist one on each side, namely, Grand Portage Bay and Wauswaugoning Bay, of which the point is the dividing promontory. The harbor of refuge near this point is the only one on the north side of Lake Superior. As there is none on the Canada side, and as it is not expected that any will be constructed or lighted on that side at an early date, the refuge afforded by the bay near Pats Point is almost the only place into which vessels can run for shelter on the north shore. This light and fog signal can be established for the sum named in the bill. This plan, therefore, has the Board's favorable recommendation.

LAKE MICHIGAN.

34. "At Round Island, Straits of Macinac, a light and fog-signal, at a cost not exceeding fifteen thousand dollars."

This is recommended in the Board's Annual Report for 1891, on p. 147.

"Mission Point is understood to be on the easterly extremity of Macinac Island, in which position a light would serve only as a general guide and be of little service for the passage of the narrow strait between Macinac and Round islands. What is needed is a light so placed as to enable vessels to hold a close and safe course between the two, for which reason the light should be either on the spit at the western side of the harbor of Macinac Island or on the projecting point of Round Island, directly opposite. At present there are no lights to aid the navigation of the northern channel, for which reason vessels are compelled to use the southern, with considerable loss of distance and time. The Government owns Round Island, and a light-house site there would cost nothing. On Macinac Island the land is held at a high valuation, particularly in the vicinity of the town, which is a noted summer resort, and it would be both difficult and costly to obtain a site there. It is therefore recommended that an appropriation of \$15,000 be made for building a light and fog-signal station, not at Macinac Island, but on Round Island."

The Board renews the recommendation.

35. "At Seul Choix Point, a fog signal, at a cost not exceeding five thousand five hundred dollars."

This was recommended in the Board's Annual Report for 1891, on p. 125:

"It has now become evident that the interests of navigation require the establishment of a steam fog signal here. It will cost not exceeding \$5,500. The Board recommends that an appropriation of that amount be made therefor."

The Board renews the recommendation.

36. "On South Fox Island, a fog signal, at a cost not exceeding five thousand five hundred dollars."

This was recommended in the Board's Annual Report for 1891, on p. 120.

"The passage between South Fox and Manitou Islands is much used by vessels, which, because of the outlying shoals south of the Fox, either keep near the South Fox Island light or off the north end of Manitou. It is therefore recommended that a steam fog signal be established at South Fox Island light station, Lake Michigan, at a cost not exceeding \$5,500, and that an appropriation of that amount be made therefor."

The Board renews the recommendation.

37. "On north end North Manitou Island, a light and fog signal, at a cost not exceeding twenty thousand dollars."

The immense commerce between the straits of Mackinaw and Green Bay uses three different passages.

First. The north passage, which is protected by the lights at White Shoal, Squaw Island, and Seul Choix Point.

Second. The passage between North Fox Island and Beaver Island.

Third. The passage between North Manitou and South Fox Islands.

The choice between these channels depends entirely upon the conditions of the weather prevailing at the time. In view of the immense trade, each passage needs to be well lighted. The light on the north end of North Manitou Island is needed for the protection of the third passage above named. There is a large traffic through the passage of North Manitou Island, which is unmarked, except by the Fox Island light, 17 miles distant. A light and fog signal on the north end of North Manitou

will be a valuable aid to navigation. They can be built for the sum named in the bill. The plan, therefore, meets with the Board's favorable recommendation.

38. "At Frankfort Harbor, a bell, at a cost not exceeding one thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 120.

"A fog bell is needed as an adjunct to the pierhead light in thick weather when the light can not be seen. The board does not favor the use of bells for such purposes as a rule, but it makes an exception in this case for obvious reasons. It is estimated that a bell with proper striking apparatus, to be operated by machinery, can be adjusted to the tower at a cost not exceeding \$1,000, and it is recommended that an appropriation of that amount be made for this purpose."

The Board renews the recommendation.

39. "At Ludington, a fog signal, at a cost not exceeding five thousand five hundred dollars."

This was recommended in the Board's Annual Report of 1891, on p. 121.

"This work of extending the south pier, on which a light has been maintained since 1870, is progressing rapidly and will soon be completed. A steam fog signal has long been needed here, but it was deemed impracticable to establish it until the pier was finished. It is estimated that the signal will cost \$5,500, and it is recommended that this amount be appropriated therefor."

The Board renews the recommendation.

40. "At St. Joseph, a fog signal, at a cost not exceeding five thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 122:

"This port is about midway between Chicago and Grand Haven, and has an extensive lake commerce. During thick weather steamers find it difficult to get into the harbor, as the sound of the bell at the light tower is ineffective. This is especially so, as a shoal lies off the entrance and close to the track of vessels bound to and from Chicago, outside of which the bell is barely audible, but quite unreliable. The Board considers that a steam fog signal is needed at this station. It can be established for \$5,000. The Board recommends that an appropriation of that amount be made therefor."

The Board renews the recommendation.

41. "At Manitowoc, a fog signal, at a cost not exceeding five thousand five hundred dollars."

With the closing of navigation through the Straits of Mackinaw, the port of Manitowoc, situated as it is at the northern limit of comparatively open water during the winter, becomes the natural outlet of the region north and west, and steamers in midwinter make regular trips between it and the railroad terminal points on the eastern side of the lake. The establishment of a steam fog signal at this light station would promote the interest of an important and growing trade. It can be done for the sum named in the bill. The plan meets with the Board's favorable recommendation.

42. "At Sturgeon Bay Canal, a light at a cost not exceeding twenty thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 124:

"A large and increasing commerce passes the canal light, both up and down the lake and through the canal to and from Green Bay. The present light on the north pierhead is flashing red of the sixth or smallest order, and is inadequate in power and elevation. The establishment of a new coast light on shore near to the light-keeper's dwelling has already been recommended, and that recommendation is now renewed. The estimated cost is \$20,000, and it is recommended that an appropriation of that amount be made therefor."

The Board renews the recommendation.

43. "At or near Porte des Mortes, range light and fog signals, at a cost not exceeding twenty-one thousand dollars."

This was recommended in the Board's annual report for 1891, on p. 124:

Range lights and a fog signal on the southwest side of Plum Island will be an invaluable addition to the aids to navigation in the Porte des Mortes passage. The Board is of opinion that they should be established on Plum Island, and has so recommended in its report of January 7, 1890. They can be built for \$21,000, and the Board renews its recommendation that an appropriation of that amount be made therefor."

The Board renews the recommendation.

44. "At St. Martin Island, a light, at a cost not exceeding fifteen thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 125:

"The passage between St. Martin and Little Gull islands, if marked by lights and fog signals, would be much safer than Poverty Island passage, as the entrance is capacious and unobstructed. A fourth-order light and a fog signal should be established on the northwest end of St. Martin Island. It is estimated that they can be built for \$15,000, and it is recommended that an appropriation of this amount be made for that purpose."

The Board renews the recommendation.

45. "At Little Gull Island, a light and fog signal, at a cost not exceeding twenty thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 125:

"St. Martin Passage, though relatively narrow, is deep and clear, and could be made by a light and fog signal on Little Gull Island, and another on the northwest end of St. Martin a very excellent passage. It is proposed, therefore, to establish a light and fog signal on Little Gull Island. It is estimated that these can be built for \$20,000, and it is recommended that an appropriation of that amount be made for this purpose."

The Board renews the recommendation.

46. "At or near Squaw Point, Little Bay de Noquette, a light, at a cost not exceeding five thousand dollars."

This was recommended in the Board's Annual Report for 1891, on p. 126, under the name of Gladstone:

"It is stated that the plans of the Minneapolis, Sault St. Marie and Atlantic Railroad, now in process of execution, will give to Gladstone the most important shipping in these waters, and that every year will augment its importance. It is stated that last year nearly 300 vessels entered that harbor, and it is expected that next year the number will exceed 1,000. A light either on Sanders Point or Squaw Point will answer the purpose of guiding into Gladstone Harbor, at least for the present. It is estimated that a site can be obtained and proper structures can be erected for the establishment of a proper light at a cost of \$10,000."

This port (Gladstone) has only been in existence for some three or four years, but it has already taken a prominent place in the lake trade. It is a regular port of the St. Paul, Minneapolis, and Sault St. Marie Railroad, and is an important place in the shipment of flour, grain, and ore. It also receives large quantities of coal. A regular line of steamers, it is claimed, is to be established by the Soo Railroad to run between Gladstone and the lower lakes, and several large steel steamers are now being built for this service. The point is one of growing importance. It has been a question whether the Gladstone light should be established on Sanders Point or Squaw Point. The Board is of opinion that Squaw Point is the better place. There are no shoals near. Deep water hugs both points, and a light on either would be visible through the whole course of 6 or 7 miles from opposite Escanaba light. The light can be established for the sum named in the bill. The plan therefore, meets with the Board's favorable consideration.

47. "At or near Peshtigo Shoal, Green Bay, a light-house with a fog signal, at a cost not exceeding ten thousand dollars."

This shoal lies on the north of the Peshtigo River and projects for a long distance into Green Bay. The larger and important commerce of the vicinity has for many years been seriously incommoded by the lack of a reliable marking of the end of the point. The Board is of opinion that it will be better to establish a light-house and fog signal on or near the point of Peshtigo Shoal. The light-house and fog signal can be built for the sum named in the bill. This plan is therefore recommended by the Board.

48. "That enough of the sixty thousand dollars heretofore appropriated by act of Congress of August thirtieth, eighteen hundred and ninety, for the building of a light-house on Eleven-Foot Shoal, Green Bay, be applied, under the direction of the Light-House Board, to the construction or purchase and equipment of one or more light-ships for service on the Great Lakes, and said appropriation shall be immediately available therefor."

The Board is of the opinion that these four shoals should be lighted. It is thought that it can be done effectively and speedily with light-ships. Whether they should all be lighted immediately and simultaneously is not so clear. The Board therefore recommends that the last clause of the bill stand thus:

Light-House Board: For the construction or purchase and equipment of one or more light-ships for service on the Great Lakes, and said appropriation shall be immediately available therefor.

Respectfully yours,

O. L. SPAULDING,
Acting Secretary.

TREASURY DEPARTMENT,
Washington, D. C., March 9, 1892.

SIR: I have the honor to acknowledge the receipt of a letter from your committee of February 16, 1892, transmitting H. R. bill 5976, providing for the establishment of a steam fog whistle at Sheboygan, Wis., at a cost not to exceed \$5,000, and requesting the views of the Department touching the merits of the bill and the propriety of its passage.

This matter was considered by the Light-House Board at its session held on March 7, 1892, when the conclusion was reached that the interests of navigation require that a steam fog signal be established as proposed by H. R. bill 5976, and that for this object an appropriation of \$5,500 will be needed.

Recommendation is therefore made that the bill be amended so as to provide for an appropriation of \$5,500 instead of \$5,000, as stated therein, and that in this form the bill be passed.

A copy of H. R. bill 5976 is herewith inclosed.

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

The CHAIRMAN OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
House of Representatives, Washington, D. C.

TREASURY DEPARTMENT,
Washington, D. C., January 21, 1892.

SIR: At the instance of the Light-House Board, to which was transmitted on January 19, 1892, by the subcommittee on Interstate and Foreign Commerce, for information, H. R. bill 81, appropriating \$2,000 for a light and fog signal on the Government breakwater recently constructed at Bridgeport, Conn., I have the honor to state that the Light-House Board reports that from a careful examination of the locality recently made by its officers it appears that the interests of commerce and navigation require that a light should be established on the Government breakwater at Bridgeport, but that a fog signal is not necessary, and that the estimated cost of establishing a suitable light is \$2,000.

The Light-House Board is therefore of the opinion that the amount named in the bill is sufficient for the establishment of a suitable light on the breakwater in question.

A copy of H. R. bill 81 is inclosed.

Respectfully,

O. L. SPALDING,
Acting Secretary.

Hon. R. Q. MILLS, M. C.,
*Chairman of the Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

TREASURY DEPARTMENT,
Washington, January 16, 1892.

SIR: At the instance of the Light-House Board I have the honor to state that the interests of commerce and navigation require that the present fog signal apparatus at the Southwest Ledge (Connecticut) light and fog signal station should be replaced by a steam fog signal similar to the one now in operation at Execution Rocks, New York.

It appears that the caloric engine and Daboll trumpet now in use at this station have never worked satisfactorily, and that parties interested in navigation have frequently complained of its inefficiency.

The estimated cost of a suitable steam fog signal, including the cost of the required fog-signal house, is \$12,500.

I have, therefore, the honor to recommend that the following item be included in the proper appropriation bill:

"*Southwest Ledge, Connecticut:* For replacing the fog-signal apparatus now in use at the Southwest Ledge, entrance to New Haven Harbor, Connecticut, light station, a suitable steam fog signal, including the cost of the required fog-signal house, twelve thousand five hundred dollars."

Respectfully yours,

O. L. SPAULDING,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

(52)

TREASURY DEPARTMENT, *February 1, 1892.*

SIR: I have the honor to acknowledge the receipt of a letter from your committee dated January 23, 1892, referring certain H. R. bills to this Department, with request for suggestions touching the merits of the bills and the propriety of their passage.

Among these bills is H. R. 4425, authorizing the erection of a light-house at Wilson Harbor, Niagara County, N. Y., at a cost not to exceed \$6,000.

Inclosed is an extract from the current Annual Report of the Light-House Board, pp. 135-6, recommending that an appropriation of \$2,500 be made for this object.

The Board is still of opinion that the light-house should be built, and that it can be done at a cost not exceeding the amount named (\$2,500).

Suggestion is therefore made that the bill be amended as recommended, and that it then be passed.

A copy of the letter above mentioned and of the bill in question are returned as requested.

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

The CHAIRMAN OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
House of Representatives, Washington, D. C.

(53)

TREASURY DEPARTMENT,
Washington, D. C., January 21, 1892.

SIR: At the instance of the Light-House Board, to which was transmitted on January 19, 1892, by the subcommittee on Interstate and Foreign Commerce, for information H. R. bill 3589, appropriating \$25,000 for the establishment of a light-house and fog signal at or near Big Oyster Bed Shoal, mouth of the Maurice River, Delaware Bay, New Jersey, I have the honor to state that the Light-House Board reports that the interests of commerce and navigation require that the proposed aids to navigation should be established.

In its Annual Report for the fiscal year ending June 30, 1890, an extract from which is inclosed, recommendation was made by the Light-House Board that a light and fog signal be established at Big Oyster Beds. This recommendation was renewed in its report for the last fiscal year, and an item of \$25,000, for this object, was included in its annual estimates for the next fiscal year.

The Board is of the opinion that the amount named in the bill, \$25,000, is sufficient.

A copy of H. R. bill No. 3589 is herewith inclosed.

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

Hon. R. Q. MILLS, M. C.,
Chairman of the Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

[Extract from the Annual Report of the Light-House Board for the year ending June 30, 1890.]

Big Oyster Beds, mouth of Maurice River, Delaware Bay, New Jersey.—The following recommendations made in the Board's last two annual reports are renewed:

"It would be largely to the interests of the oystermen of Maurice River to establish a light and fog signal at or near the southern edge of Big Oyster Beds. It would be desirable also to place a beacon light, with a lantern on it which will burn eight days, to mark the entrance to the river. The light on Big Oyster Beds should be erected on a strong foundation, to resist the push of floating ice, and would cost, it is estimated, about \$25,000. The beacon light at Elder Point could be built for about \$100. On the exhibition of these lights the Maurice River light could be discontinued."

It is recommended that appropriations of these amounts be made therefor.

(54)

TREASURY DEPARTMENT, *January 16, 1892.*

SIR: At the instance of the Light-House Board I have the honor to state that the interests of commerce and navigation require that a light should be established at the mouth of Salem Creek, New Jersey.

It appears that navigators experience much difficulty in finding the mouth of this creek at night, and that vessels generally wait outside all night or ground in attempting to enter the creek.

The estimated cost of establishing a suitable light is \$800.

I have therefore the honor to recommend that there be included in the proper appropriation bill the following item:

"*Salem Creek, New Jersey.*—For establishing a suitable light at or near the mouth of Salem Creek, New Jersey, eight hundred dollars."

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

(55)

TREASURY DEPARTMENT,
Washington, D. C., January 21, 1892.

SIR: At the instance of the Light-House Board, to which was transmitted on January 19, 1892, by the subcommittee on Interstate and Foreign Commerce, H. R. bill appropriating \$60,000 to establish additional aids to navigation along the ship channel of Mobile Bay, Alabama, I have the honor to state that the Light-House Board reports that the interests of commerce and navigation require that the proposed aids to navigation should be established.

In its annual report for the fiscal year ending June 30, 1890, an extract from which is inclosed, recommendation was made by the Light-House Board that additional aids to navigation be established along the ship channel, Mobile Bay, Alabama. This recommendation was renewed in its report for the last fiscal year, and an item of \$60,000 for this object was included in its annual estimates for the next fiscal year.

The Board is therefore of the opinion that the amount named in the bill is sufficient.

A copy of House bill 14 is herewith inclosed.

Respectfully, yours

O. L. SPAULDING,
Acting Secretary.

Hon. R. Q. MILLS, M. C.,

*Chairman of the Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

[Extract from the Annual Report of the Light-House Board for the year ending June 30, 1890.]

The Ship Channel, Mobile Bay, Alabama.—The interests of commerce require that additional aids to navigation be established along this channel. The Board is of opinion that five or more light stations should be built along the ship channel. It is estimated that these lights can be established for \$60,000, and it is recommended that an appropriation of this amount be made therefor.

(56)

TREASURY DEPARTMENT,
Washington, D. C., March 12, 1892.

SIR: At the session of the Light-House Board, held on March 7, 1892, the matter of the proposed establishment of a light on Deer Point at the entrance to Santa Rosa Sound, Pensacola Bay, Fla., was considered, when it was decided that an appropriation of \$1,000 would be needed to establish a suitable light at this locality, and that the proper measures be taken to obtain this appropriation.

I have therefore, at the instance of the Light-House Board, the honor to recommend that the following item be included in the proper appropriation bill:

"*Deer Point at the entrance to Santa Rosa Sound, Pensacola Bay, Fla.*—For establishing a light at Deer Point, at the entrance to Santa Rosa Sound, Pensacola Bay, Fla., \$1,000."

Respectfully yours,

O. L. SPAULDING,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

(57)

TREASURY DEPARTMENT,
Washington, D. C., February 2, 1892.

SIR: The Light-House Board recommends that an appropriation of \$6,000 be made for the establishment of a light and fog signal station at the mouth of the Willamette River, Oregon.

This matter came up at the session of the Light-House Board held on November 10, 1891, upon papers submitted by the vessel interests of that part of the country.

It appears that the channel at the entrance to the Willamette River from the Columbia River is very narrow, and that vessels coming up or down the Columbia River, bound into the Willamette, experience, at times, in foggy weather, great difficulty in locating the entrance, which causes much delay and great inconvenience to the regular passenger boats, as well as to the vessels employed in the carrying trade.

I have therefore the honor to recommend, at the instance of the Light-House Board, that the following item be included in the proper appropriation bill:

"*Willamette River, Oregon.*—For establishing a light and fog signal at the mouth of the Willamette River, Oregon, \$6,000."

Respectfully yours,

O. L. SPAULDING,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

(58)

TREASURY DEPARTMENT,
Washington, D. C., January 21, 1892.

SIR: At the instance of the Light-House Board, to which was transmitted on January 19, 1892, by the subcommittee on Interstate and Foreign Commerce, for information, House bill 492, appropriating \$75,000 for establishing a first-order light and fog signal at Grays Harbor, Washington, I have the honor to state that the Light-House Board reports that the interests of commerce and navigation require that the proposed light and fog signal should be established.

In its annual report for the fiscal year ending June 30, 1890, an extract from which is inclosed, recommendation was made that an appropriation of \$60,000 be made for the establishment of a first-order coast light about 4 miles north of the site selected at Port Brown, Grays Harbor, for a harbor light, for which an appropriation of \$15,000 was made by the act approved July 7, 1884, and that this appropriation be made applicable to the establishment of the proposed first-order light, which would increase the amount to \$75,000, as contemplated by House bill 492.

This recommendation was renewed in the Board's annual report for the year ending June 30, 1891, and an item of \$60,000 for a light and fog signal for Grays Harbor was included in the annual estimates of the Board for the next fiscal year.

The Board is therefore of the opinion that the amount named in the bill, \$75,000, is sufficient.

It is suggested, however, that the bill be so amended as to provide for a new appropriation of \$60,000, and for the application to the object in view of the old appropriation of \$15,000 for a harbor light, made by the act approved July 7, 1884. The amount available would then be \$75,000.

H. R. bill 492 is inclosed.

Respectfully yours,

O. L. SPAULDING,
Acting Secretary.

Hon. R. Q. MILLS, M. C.,
*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

[Extract from the Annual Report of the Light-House Board for the year ending June 30, 1890.]

Grays Harbor, seacoast of Washington.—The following recommendation, made in the annual reports of the Board for the last three years, is renewed:

"By the act approved July 7, 1884, Congress appropriated \$15,500 for the establishment of a light at this place. While the negotiations for the purchase of a site for the light thus authorized were being carried on, the inadequacy of the small harbor-light it was proposed to erect to meet the demands of the commerce and navigation of this part of the Pacific coast became apparent, together with the necessity for the establishment of a first-order coast-light about 4 miles north of the sight selected for a harbor-light. This matter was considered by the Board at its session held on February 3, 1886, when it was ordered that the proper steps be taken to have \$60,000 added to the existing appropriation, to enable the Board to erect a first-order light about 4 miles north of the site selected at Point Brown for the Grays Harbor light. The Board therefore recommends that an appropriation of \$60,000 be made for the establishment of a first-order light instead of for a harbor-light as originally intended, and that the \$15,500 appropriated by the act of July 7, 1884, be made applicable to the same purpose."

(59)

[Extract from page 170 of the Report of the Light-House Board for the year ended June 30, 1891.]

North Head, Cape Disappointment (Hancock), sea coast of Washington.—The following recommendation which was made in the Board's last two annual reports is renewed:

"The present light at Cape Disappointment is inadequate for the purposes of commerce and navigation. It is believed that if North Head is marked by a first-order light, and the proposed light-stations at Grays Harbor and Destruction Island are completed, that the Pacific coast will be well supplied with lights of the first-order from Cape Flattery to Tillamook Rock. Proper measures should be taken for the establishment of a first-order light at North Head. This, it is estimated, will cost \$50,000. It is recommended, therefore, that this sum be appropriated for this purpose. When this light is established, the first-order light at Cape Disappointment will no longer be necessary, and it is proposed to then reduce it to a light of the fourth order. It will then be of sufficient power to benefit vessels close to the bar outside and vessels in the Columbia River."

○

The first of these is the fact that the United States is a young nation, and that its history is a history of growth and development. The second is the fact that the United States is a nation of immigrants, and that its history is a history of the struggle for a common identity. The third is the fact that the United States is a nation of diverse peoples, and that its history is a history of the struggle for equality and justice.

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STATUE OF GEN. WILLIAM T. SHERMAN.

MAY 21, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. OUTHWAITE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 8888.]

The Committee on Military Affairs, having had under consideration the bill (H. R. 8888) for preparation of a site and erection of a pedestal for statue of late Gen. William T. Sherman, report it to the House with the recommendation that it do pass.

The amount appopriated for the preparation of a site and erection of a pedestal is the same as has been heretofore appropriated by Congress for the same purpose in the cases of Gens. Hancock, Logan, and Sheridan, and the committee recommend that the bill pass so that preparations may be made at an early date for the reception of the statue which it is proposed to erect by the patriotic contributions of the American people for that purpose.



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REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE
FOR THE YEAR 1887

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1887

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The following report of the
Commissioners of the Land Office
for the year 1887, is
presented to the
General Assembly of the
State of Illinois, in
accordance with the
provisions of the
Act of March 27, 1887,
relating to the
report of the
Commissioners of the
Land Office.

CARRIAGE OF PASSENGERS BY RAILROADS IN INDIAN
TERRITORY AND OKLAHOMA.

MAY 21, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. TERRY, from the Committee on the Territories, submitted the following

REPORT:

[To accompany H. R. 8507.]

The Committee on the Territories, to whom was referred the bill (H. R. 8507) to put in force in the Indian Territory and Oklahoma Territory the law of the State of Arkansas entitled "An act to regulate the rates of charges for the carriage of passengers by railroads," approved April 4, 1887, having carefully considered the same, beg leave to report that 3 cents per mile is the maximum rate for the carriage of passengers in the various States adjacent to these Territories, and is also the maximum rate provided for in all recent acts of Congress granting to railroad companies rights of way in these Territories, and, so far as the committee have been able to learn, there are but two railroads in the Indian Territory that charge in excess of that rate, and these obtained their rights of way before the practice obtained of Congress prescribing the maximum rate in the act granting the right of way.

The committee are of the opinion that 3 cents per mile is as great a charge as should be exacted by any railroad in these Territories, and therefore report the bill with recommendation that it do pass.



JOHN W. TAYLOR.

MAY 21, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWERS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 1274.]

The Committee on Military Affairs, to whom was referred the bill (S. 1274) to correct the military record of John W. Taylor, have had the same under consideration and report:

Your committee find the bill wholly meritorious for the reasons given in the accompanying Senate report, and recommend that the bill do pass.

[Senate Report No. 165, Fifty-second Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 1274) to correct the military record of John W. Taylor, have examined the same and report:

The exceptional and most honorable military career of John W. Taylor, late musician of Company A, Wisconsin Heavy Artillery, appears from the following facts:

That in June, 1861, being then 12 years of age, the boy Taylor ran away from home and entered service as drummer in the regiment above named, and remained in such service until mustered out, after the close of the war, August 31, 1865.

That his whereabouts remained unknown to his family until two years after his entry upon service, when his father, late sergeant of Company C, Sixteenth Connecticut Infantry, discovered him, and consented to his remaining therein.

That by reason of extreme youth at his entrance upon service he could not be under the law and was not then mustered, and that he remained doing acceptable duty as an unmustered musician until October, 1863, when First Lieut. Van Wie, of his company, being appointed his guardian for that purpose, consented to his muster, which was legally done on the 30th of October, 1863.

The facts detailed are derived from official records and from affidavits by the beneficiary under the bill, by his mother, and by officers and members of the regiment and company in which he served. Among these is the affidavit of P. H. Ray, now captain in the Eighth Regular Infantry, who was captain of Company L of the regiment in which Taylor served.

These facts render argument superfluous. They show a patriotic enthusiasm and a constancy of courage rare in a lad of such extreme youth—qualities which deserve the public recognition and correction of his military record, for which the bill under consideration provides.

The committee, therefore, recommend its passage, with the following amendment:
Strike out the preamble.

Strike out on line 9, section 1, the words "on the thirty-first day of October" and insert in lieu thereof the words "August thirty-first."

Add to section 1 the following words: "Upon surrender of his discharge or upon satisfactory proof of his inability to surrender the same."

WILLIAM R. BOAG.

MAY 21, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CROSBY, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 675.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 675) for the relief of William R. Boag, having carefully considered the same, recommend that the bill do pass.

This bill was favorably reported by the Committee on Military Affairs of the Fifty-first Congress at its first session, and the report made by that committee is adopted by this committee.

House Report No. 1883, Fifty-first Congress, first session.

Mr. CAREY, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 6625.]

The Committee on Military Affairs, to whom was referred a bill (H. R. 6625) for the relief of William R. Boag, respectfully reports:

That William R. Boag was enrolled as a private in Company K, First Massachusetts Infantry Volunteers, on May 23, 1861, to serve three years, and stands charged with deserting from the Chester General Hospital on the 31st day of October, 1862. The evidence produced establishes the fact that the soldier left the hospital, believing that he had been discharged from the military service of the United States. At the time the soldier left the hospital he was sick and unable to perform military duty, and, owing to a wound received and sickness contracted while in the military service, this man will go through life broken down in health. He is now on the pension-rolls. The report of the War Department and a sworn statement of the said Boag are herewith printed and made a part of this report.

The committee recommend that the bill do pass.

Case of William R. Boag, Company K, First Massachusetts Infantry Volunteers.

William R. Boag, private Company K, First Massachusetts Infantry Volunteers, was enrolled on May 23, 1861, to serve three years. Charges of desertion of August 17, 1861, and August 29, 1862, appearing against him on company and regimental records, were removed as erroneous on August 26, 1889, after due investigation by the War Department.

On June 30, 1862, he was captured by the enemy at James River, Virginia; was confined in prison at Richmond, Va., July 13, 1862; paroled at City Point, Va., July 25, 1862; was admitted on July 29, 1862 (a paroled prisoner of war), to General Hospital at Chester, Pa., with chronic diarrhea. The records of that hospital show that he was present on August 31, 1862, but report him as "deserted, October 31, 1862." The company muster-roll of October 31, 1862, reports him, "absent, sick;" but the roll of December 31, 1862, show him, "deserted;" indicating that the regimental officers were notified by the surgeon in charge of the Chester General Hospital, that the man deserted there on October 31, 1862, as borne on said hospital records.

He never returned to military control after October 31, 1862. On his own request of October 6, 1877, he was dishonorably discharged by the War Department, on October 23, 1877, to date October 31, 1862, by reason of desertion.

With a view to the removal of the charge of desertion of October 31, 1862, and an honorable discharge, William R. Boag, in several affidavits executed by him between 1876 and 1887, states: Not long after entering Chester General Hospital, he requested his discharge of the surgeon, who several days afterward gave him his discharge certificate dated August 2, 1862. He was then still very sick. Next day he started to go to Boston, and while at New York (he being in a miserable plight), he was offered a passage to his home, St. Johns, N. F., by Captain Monkton, on the brig *Jessie*. This

brig sailed from New York on August 23, and arrived at St. Johns on September 4, 1862, where he was immediately confined to his bed with a relapse of the fever, which turned into typhoid; was then attended by his mother's physician, Dr. Adam McKenn (now deceased), and was confined to his bed until November, 1862. From the effect of the fever he became nearly deaf, his eyesight was affected, etc. While he was thus prostrated with typhoid fever, his clothes (containing his discharge), were burned by order of the doctor.

John J. Rowe, of Cambridge, Mass., on August 15, 1889, swears: He was born at St. Johns, Newfoundland; has known William R. Boag from boyhood; knows that Boag arrived from the States in 1862 very sick with fever, but affiant did not see Boag till about November, 1862, when he appeared completely broken down, suffering with rheumatism; but after awhile Boag gained a little in health and was able to go about. No other pertinent testimony in the case is before the War Department.

On August 26, 1889, the application for removal of the charge of desertion of October 31, 1862, and for an honorable discharge in this case was denied by the War Department on the following grounds:

As the muster-roll of the General Hospital, Chester, Pa., of August 31, 1862, shows this man present there on that date, therefore his uncorroborated and positive statements to the effect that he was discharged there on August 2, 1862, cannot be accepted to controvert the explicit and authentic official record in the case.

As it is not established by any competent testimony submitted to this Department that he was prevented by disease, etc., incurred in line of duty from returning to the United States and to proper military control prior to May 25, 1864 (date of muster-out of his command), the act of Congress approved March 2, 1889, affords no relief in this case.

Reports in this case were furnished on February 12, 1886, and February 1, 1888, by the Adjutant-General, U. S. Army, to the Secretary of War, for the use of House Committee on Military Affairs, in connection with the consideration of H. R. 1131, Forty-ninth Congress, first session, and H. R. 403, Fiftieth Congress, first session.

Respectfully submitted,

F. C. AINSWORTH,
Captain and Assistant Surgeon, U. S. Army.

RECORD AND PENSION DIVISION, March 12, 1890.
The SECRETARY OF WAR.

Sworn statement of William R. Boag, of Boston.

BOSTON, MASS., April 14, 1890.

My name is William R. Boag. I was born in St. John's, Newfoundland, 12th April, 1835. I came to Boston, Mass., 1860, and was employed as a dry goods salesman with Beebe & Co. about a year previous to 12th April, 1861, at which date I left my position and volunteered to go to the war, and enlisted said 12th April, 1861, in Company K, First Regiment Massachusetts Volunteer Infantry. At the election of officers I was elected as third lieutenant of said Company K, and on the 19th of April, 1861, received my commission from Governor John A. Andrew. On about the 24th May, 1861, the regiment was sworn in at Faneuil Hall, Boston, and in preference to taking a second lieutenant's position in another regiment I went in Company K as a private.

In July 18, 1861, I was wounded in the left leg, for which I draw a pension under certificate No. 155,140 since 1878. A few days after being wounded I was sent to Alexandria, Va., and was sent from Alexandria Hospital to Boston on the steamer "Ben De Ford." I arrived in Boston about the 7th August, 1861. I was admitted to the Massachusetts General Hospital about the 9th August, and there remained till about 30th September, when my leg getting better and about the 20th October, 1861, I again reported to my regiment, then at Budd's Ferry, Va. I was at the siege of Yorktown, Va., and at the battle of Williamsburgh, Va., on the 5th May, 1862. On the 6th of May I was detailed in picking up the dead, and it was here I felt the first symptoms of typhoid fever; was in the hospital tent at "Fair Oaks" very low, indeed; and latter part of June, 1862, I was sent to Savage Station, Va., by ambulance by order of Dr. Salter, then our regimental surgeon, about the last of June, 1862. (I am giving dates to the best of my knowledge.) About 1st July, 1862, the whole hospital at Savage Station was captured, and we were all, about 2,500 in number, brought to Richmond in a cattle train, and I with others were put in Libby Prison, where I was treated most barbarously all the time there, having the fever, and received no medical treatment whatever. The latter part of July, 1862, we were exchanged. I was carried on the backs of some of my comrades to the train, which proceeded to City Point, Va., where we embarked on board some steamers there waiting for us, and went then immediately to Chester (Pa.) Hospital. We arrived in Chester, Pa., sometime beginning of August, 1862. I was still very sick and weak. I asked the doctor of the

hospital at Chester, Pa., if he could get my discharge, and he stated two or three times that he would, and on a date between 12th and 22d of August, 1862, he called me and handed me this paper. I then went from the hospital firmly under the impression that I was discharged; so I intended coming to Boston. I got as far as New York and the fever got worse, and an opportunity offered, in Captain Moncton, brig *Jessie*, seeing the state I was in, and having no relations living in Boston, he offered to bring me to my home, and he did not expect I would survive the passage. I arrived in St. John's, Newfoundland, about 20th September, 1862, and from the day of my arrival till about the last of November, 1862, I laid on my bed with a relapse of the fever. I was tended all the time by Dr. Adam McKen, since dead. Through the fever I lost the hearing of my left ear totally and the right ear partially. It also effected my eyesight so that I could not read without the use of glasses, and in fact, it left me a complete wreck. I was a strong, healthy man up to my 26th birthday, with good health and good prospects before me, but sacrificed all and volunteered and enlisted on the 12th April, 1861. The news came to Boston that our flag was first fired on. I swear here that I never had any reason to desert, and I swear that I left Chester Hospital with the idea that I was a discharged man.

When I was sick on arriving at St. John's, Newfoundland, my poor mother, since dead, burnt all my clothes on account of their filthy state, and being afraid the fever was infectious, and the papers and diaries I kept through the war were lost to me.

I never knew that there was any charge of desertion against me till I first made an application for pension for my wound in my leg, which I think was in 1875 or 1876, and I was not fit to again return to the service after the sickness I endured, having suffered with a complication of diseases.

The above statement to the best of my knowledge is true.

W. R. BOAG,

Late Private of Company K, First Regiment Volunteer Infantry.

COMMONWEALTH OF MASSACHUSETTS,

Suffolk, ss :

Personally appeared before me, this 15th day of April, A. D. 1890, the above-named William R. Boag, and made oath to the above statement by him subscribed.

THOMAS MAIR,

Justice of the Peace.



NATIONAL SANITARIUM IN NORTHERN NEW MEXICO OR
SOUTHERN COLORADO.

MAY 23, 1892.—Laid on the table and ordered to be printed.

Mr. MITCHELL, from the Committee on Military Affairs, submitted the
following

ADVERSE REPORT:

[To accompany H. R. 6260.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6260) to establish a national sanitarium in northern New Mexico or southern Colorado for the treatment of consumption, have had the same under consideration and report as follows:

The bill appropriates \$50,000 for the establishment of a national sanitarium for consumptives. It also creates an expensive commission to be appointed by the President.

The project is one that the committee does not think the Government ought to engage in. It therefore recommends that the bill do not pass.



W. JASPER BLACKBURN.

MAY 23, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 2393.]

The Committee on Claims, to whom was referred the bill (H. R. 2393) for the relief of W. Jasper Blackburn, report:

Your committee have carefully considered the same and find that W. Jasper Blackburn was a member of the Fortieth Congress, and as such member was entitled to the sum of \$10,000 salary, and that he has only received the sum of \$4,402.77 and is therefore entitled to the balance, to wit, the sum of \$5,597.23. See letter of George P. Fisher, First Auditor Treasury Department, herewith presented.

TREASURY DEPARTMENT, FIRST AUDITOR'S OFFICE,
Washington, D. C., February 18, 1892.

SIR: In reply to your letter of 13th instant to the Secretary of the Treasury, asking for information in regard to the compensation of Hon W. Jasper Blackburn, M. C., from Louisiana, referred to this office, it appears from the records of this Department that Mr. Blackburn received mileage for both terms of the Fortieth Congress, amounting to \$1,865.60, and salary for ten months and seventeen days, viz, from April 17, 1868, to March 3, 1869, inclusive, amounting to \$4,402.77. For the full period of the Congress he would have been entitled, in addition to what he received as set forth above, to salary from March 4, 1867, to April 16, 1868, or thirteen months and thirteen days, amounting to \$5,597.23.

Respectfully yours,

GEO. P. FISHER,
First Auditor.

Hon. B. H. BUNN,
Chairman Committee on Claims, House of Representatives.

Your committee therefore recommend that the bill be amended by striking out the words "four hundred and seventeen," in line 6, and inserting in lieu thereof the words "four hundred and ninety-seven dollars and twenty-three cents," and that so amended it do pass.

MRS. LUIS FREYRE.

MAY 23, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 4415.]

The Committee on Claims, to whom was referred the bill (H. R. 4415) for the relief of Mrs. Luis Freyre, report that they have carefully considered the same, and recommend that the bill be amended by adding thereto: “*Provided*, That either party shall have the right of appeal to the Supreme Court of the United States,” and as so amended it do pass.

JAMES B. PHILLIPS.

MAY 23, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 245.]

The Committee on War Claims, to whom was referred the bill (H. R. 2087) for the relief of James B. Phillips, submit the following report:

The claim is for stores and supplies alleged to have been taken by or furnished to the military forces of the United States for their use during the late war for the suppression of the rebellion. Claim stated at \$400.

It seems to your committee that an investigation by the Court of Claims is a matter of necessity before intelligent action can be had upon this case, and the committee report herewith a resolution referring the claim to the Court of Claims for a finding of facts under the provisions of the act of March 3, 1887, known as the "Tucker act," and recommend its passage.

C. C. CALDWELL.

MAY 23, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, of Tennessee, from the Committee on War Claims, submitted the following

R E P O R T:

[To accompany Mis. Doc. 246.]

The Committee on War Claims, to whom was referred the bill (H. R. 2089) for the relief of C. C. Caldwell, submit the following report:

The claim in the above-entitled case is for stores and supplies alleged to have been taken by or furnished to the military forces of the United States for their use during the late war for the suppression of the rebellion. Claim stated at \$33,965.18.

Your committee is of opinion that the claim should be referred to the Court of Claims for a finding of facts under the provisions of the act of March 3, 1887, commonly known as the "Tucker act," and report herewith a resolution to that effect, and recommend its passage.

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RIVER AND HARBOR BILL.

MAY 24, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. STEWART, from the Committee on Rivers and Harbors, submitted the following

REPORT:

[To accompany H. R. 7820.]

The Committee on Rivers and Harbors, to whom was referred the bill (H. R. 7820) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, together with the amendments of the Senate thereto, having considered the same, beg leave to report as follows:

Your committee recommend nonconcurrence in all the amendments of the Senate, numbered from 1 to 227, inclusive, and that the request of the Senate for a conference be agreed to.

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ASSESSMENT OF TAXES IN THE DISTRICT OF COLUMBIA.

MAY 24, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. JOHNSON, of Ohio, from the Select Committee to Investigate Tax Assessments in the District of Columbia, submitted the following

REPORT:

The Select Committee to Investigate Tax Assessments in the District of Columbia, respectfully submit the following report:

On the 13th day of April, 1892, the House passed this resolution:

Whereas the board of assessors are about completing an assessment upon property in the District of Columbia, and from an estimate furnished by the District Commissioners to the Committee on Appropriations it appears that this new assessment is to exceed the old by only 25 per cent; and

Whereas said old assessment on the land values alone in the District is \$76,000,000, when it should be more than \$300,000,000, this shows an extraordinary undervaluation, and, what is still worse, the greatest injustice between the valuation of the land used for business purposes, which in many cases is assessed at less than 14 per cent of its true value, and land used for residence purposes, especially where the small homes are situated, is assessed at from 70 to 80 per cent of its true value, while in many cases land held for speculation is assessed at less than 10 per cent of its true value. The foregoing facts were brought out by an expert valuation on enough land in the District to furnish an average. A public hearing was held by the Commissioners in which this subject was thoroughly discussed, and after a careful examination they say "the figures embraced in these showings seem to have been carefully and conservatively prepared;" and

Whereas the new assessment should not only show the true value of the property in lawful money, as required by law, but should also preserve an equality in assessment of the land in different localities, and not bear more heavily in some sections than in others: Therefore,

Be it resolved, That a select committee, consisting of three members, be appointed by the Speaker, which shall have power and authority to investigate and report upon the method of ascertaining land values by the board of assistant assessors in the District of Columbia; to inquire whether there is in the assessment now being prepared discrimination in favor of any section over others, and generally to inquire into all alleged inequalities pertaining to the assessment of land values.

Such committee shall have power to send for persons and papers, to examine witnesses under oath, may employ a stenographer and one clerk, and shall report the result of its investigation to the House, with such recommendation as it may deem proper to make. The expense of such investigation shall be paid out of the contingent fund of the House.

The Speaker announced the appointment of Mr. Johnson, of Ohio, Mr. Washington, and Mr. Wadsworth as the Select Committee to Investigate Tax Assessments in the District of Columbia.

THE FACTS SHOWN.

While there is yet some information connected with the matter submitted to them which your committee desire to obtain, and report on hereafter, as the new assessment on that part of the District outside of the city, where the greatest discrimination has heretofore existed, has

not yet been reached, yet in view of pending legislation in the annual appropriation bill on the subject of tax assessments in the District of Columbia, they deem it expedient to submit the testimony so far taken, with recommendations.

All our examinations have been conducted with open doors, except that of the assistant assessors themselves, which at their request was carried on in executive session. The testimony shows that the facts recited in the resolution are substantially true; that as a result of this investigation the assessment on land has been raised \$125,000,000, and yet \$225,000,000, more than half the value of land in the District, escapes taxation; that there is much inequality and discrimination; that land values are increasing at an enormous rate—on a conservative estimate to the amount of \$40,000,000 annually, enough to pay off the entire bonded debt of the District in six months; that the assessment of buildings and the under-assessment of land is operating to discourage greatly the growth and improvement of the capital; that the assessment has been made in violation of the law, without proper publicity or inquiry, and in a careless and reckless manner; and that on a fair assessment of land alone it would be easy to obtain by a tax rate less than one-half of the present all the revenue required for the needs of the District. This would make the tax rate of the city of Washington 60 cents on the \$100, a lower rate than that of any large city in the country.

We have examined, as will appear from the testimony, witnesses familiar with this subject, including representatives of large landed interests who came forward in defense of the existing system. To one of these, Mr. Brainard H. Warner, president of the Washington Loan and Trust Company, himself a large landowner, and by common consent a most fitting spokesman for the owners of valuable land in the District, we extended an invitation to act as counsel for that side of the case. Mr. Warner accepted, and at his request a number of witnesses were examined.

The testimony of these witnesses, indeed, even that of Mr. Warner himself, showed conclusively the defects in the present assessment, and the inequality and discrimination due to the system. Although they defended the present board of assessors as men of high character, and in many cases their personal friends, yet they, too, without an exception, recognized the grave defects of the present system, and presented a plan for radical modification, to which your committee acknowledge their obligation, and which they have made the basis for recommendations that they present herewith.

As to remedy for the state of things that their investigation has shown, your committee recommend certain changes, both in the manner and in the subject of assessment.

HOW ASSESSMENTS HAVE BEEN MADE.

The function of the assessors of the District of Columbia is one of great importance. It is nothing less than that of deciding, without appeal, in what proportion a number of individuals shall make up a payment aggregating \$3,000,000 a year—a function that exposes them to great pressure and a large temptation.

This work is now done by three assistant assessors appointed by a board of three Commissioners, and receiving salaries which they themselves, the appointing Commissioners, and the witnesses examined by us, all deem inadequate. They hold their sessions in secret, without any

systematized method of ascertaining facts, have the assistance of no one representing general interests, and are practically subject to no representations save those of such larger taxpayers as have sufficient time and incentive to go before them, and whose concern it is to get as much as possible of the tax burden off their own shoulders. The only check or appeal to which their decisions are subject is a useless form—their conversion into a board of equalization by the addition of the chief assessor to their number, a board in which the two assessors originally required for any action still have power to prevent any change in that action.

The results of such a system can not reasonably be expected to be other than those our investigation has disclosed. The fact is that what amounts to the distribution among individuals of three million dollars a year, without check or publicity, is by the present system placed in the hands of three gentlemen whose inducement to assume this duty is the ability it gives them to serve their friends, and who have been permitted and encouraged to act as though the matter were one with which the general public had no concern, and in which they were entirely independent of any law or regulation. The three assessors of the District of Columbia, whose official acts your committee is engaged in investigating, are gentlemen of intelligence and character, two of them at least large owners of valuable land. They have been acting, we think, in accordance with the precedents of their office, and in a manner which does not seem to have suggested either to themselves, to any other of the District officials, or to the Washington public, that they were doing anything not entirely justified. Yet they have deliberately and persistently violated the law.

The statute requires that all property shall be assessed at its true value in lawful money, yet in their assessments of real property they have, contrary to the written instructions of the assistant district attorney, whose opinion we publish as a part of this report, and indeed, of the decision of the Supreme Court of the United States (vol. 101, U. S. R., p. 152), adopted the rule, involving a deliberate change in the law, that the words "value," "true value," and "valuation," where they occur in the law, shall be interpreted to mean "what property would bring at forced sale under adverse circumstances." Nor have they even followed their own rule, since from the testimony taken by us, and embodied in our report, it will be seen that they have in some sections assessed at from 70 to 80 per cent and in others at from 30 to 50 per cent, and in one case which came to our knowledge a piece of property was assessed at 25 per cent more than it had recently sold for, while the greater part of the property on the same square was assessed at less than 50 per cent of its true value. But perhaps the most striking instance of the loose way in which it has been the habit of these assessors to discharge their most important function is given in the fact that, as discovered by your committee, they had within the week elapsing between two examinations by us of their field books added \$588,000 to the assessment of one square, changing the figures from some \$900,000 to nearly \$1,500,000, and that so entirely upon their own motion that they were at first inclined to conceal from us the fact that they had made such an important change.

If a brief and hurried investigation discloses such inequality and such laxity, how much more have we reason to expect that a full examination would show?

CHANGES RECOMMENDED IN THE SYSTEM OF ASSESSMENT.

But in the opinion of your committee enough has already been disclosed to demand an immediate and radical change in the system of assessment and the bringing into it of the two principles of responsibility and publicity.

The functions with which the assessors of the District of Columbia are charged are in reality analogous to those of a court of claims. Instead of having to decide upon the equity of claims made by individuals against the Government their function is to decide upon the equity of claims made by the government of the District against individuals. And in our opinion the same methods which experience has approved in the assessment of one class of claims should be applied to the other. In the fixing of an assessment for taxation, as in the determination of a claim against the Government, there are two parties in interest, one being the general public as represented by the government (in this case the government of the District of Columbia) and the other the particular individual affected in each case. Provision should therefore be made for the representation of each party in public, and for decision by a clearly fixed and responsible authority acting upon clearly defined principles, after hearing what either party desires to urge.

There is no necessity for having practically the same parties first make an assessment and then pass upon it as a board of equalization. The assessment itself should be an equalization, made after full hearing and necessary examination. And this equalization, instead of being made at intervals of three years, ought to be continuous. Real property is constantly changing in value; that part of it consisting of buildings and improvements, by accident and decay, and that part consisting of land, by changes in population and its centers and by public improvements. Instead of leaving examination to the last and then hurrying it through at intervals of three years, the process of equalization should be constantly going on, so that at the time of the semi-annual collection of taxes the amount due from each person or piece of property would be found fixed by deliberate and as far as possible uniform determination.

In place, therefore, of the division of responsibility between three assessors, aided at times by a fourth, who are themselves appointed by the divided responsibility of three Commissioners, we propose that the responsibility for the equalization of taxes in the District of Columbia shall be concentrated in the hands of one clearly responsible officer, deriving his appointment from a clearly responsible source, removed as far as possible from the personal influences concerned with his functions; and that all his hearings, acts, and decisions shall be matters of publicity and record. While the individuals interested to large amounts in keeping down the assessment upon their own property can be relied on to present their own side of each case before this board of equalization, one crying want in the present system has been the absence of any one whose duty it was to represent the other side, nominally that of the Government, but in reality that of the smaller property-holders, whose individual interests are not sufficient to enable them to give time and attention to the matter. This want we propose to remedy by the institution of an official whose duties shall be of the same nature as those discharged by the public prosecutors in our courts, who shall call attention to property that escapes assessment or is insufficiently assessed, and who shall appear on the other side when applications are made for reductions of assessment. The payment of adequate salaries to these two officials and to the assistants which it

may be necessary for them to have will at least entail no greater public expense than that involved in the present irresponsible, inefficient system.

LACK OF CONSCIENCE IN TAXATION.

But while your committee believe that the change in the manner of making assessments in the District of Columbia which they herewith recommend would tend to lessen inequality and conduce to a fuller and fairer assessment of land values, they find the belief very general that some change in the subject of assessment is of even more importance. In the last report of the assessor for the District of Columbia it is intimated that "the public conscience is becoming somewhat elastic on the subject of taxation." This is putting an obvious fact very mildly indeed. So far as our investigation goes, it would be a better expression of the truth to say that in matters of taxation there seems to be very little public conscience left, and that the general sentiment is that no one is bound in honor or honesty to pay any tax that he can by any device escape from, and men whose word is as good as their bond, who would feel themselves disgraced in depriving a private creditor of a penny of his due, make no scruple whatever in defrauding the Government of its claim and shirking their responsibility for what is held to be their due to society in return for the benefits which they receive from society.

At the bottom of this deplorable sentiment, we are convinced, lies a feeling not merely of injustice in the manner of levying assessments, but of injustice in their subjects, and in the minds of the thoughtful men who have appeared before us there is a general and most decided opinion that taxation for the needs of the District should be concentrated upon one subject, the existence and value of which can be readily ascertained and the justice of taxing which is perfectly clear. By law personal property in the District of Columbia is liable to the same rate of taxation as real estate, though the method of ascertaining it is different. But the attempt to tax personal property in the District has, as is the case in all the large cities through the country, degenerated into what would be a farce if it were not worse. Taxes on personal property can be collected in sparsely settled farming communities, where every man knows his neighbor, and where the comparatively little that each man has is a matter of at least neighborhood notoriety; but, though taxes on personal property may be collected from the poorer inhabitants of sparsely settled districts, they can not be collected from the rich in great cities; and in the District of Columbia, in spite of the rapid growth in population and wealth and the settlement here of many men of large means, the returns for personal property have been falling off until they now amount to the preposterous sum of some twelve millions.

Now, the attempt to collect taxes which it is thus obvious can not be collected, and as to which there is evidently a feeling that regards their collection as unjust, must by its reactive effects render more difficult than it ought to be the full and equitable assessment of taxes on landed property. And so it is with the assessment of taxes upon buildings and improvements. The value of the small and cheaply built house may be fairly estimated by a look from the outside, but the value of one of those costly edifices that are becoming so common in the Federal District can not be told without close examination. A door, a pier glass, a marble floor, a stained window, a carved staircase, in one of

these houses, often has a value far greater than the entire homestead or hired residences of one who among the great masses of our people would be deemed well-to-do. Thus without such prying examinations as are not contemplated by our system and are strongly repugnant to American ideas, anything like equality of taxation of buildings and improvements can not be attained. But more important still than this, as we have become convinced, is the feeling, vague it may be, but strong and instinctive, of the injustice of taxing a man for adding to the real wealth of the community. When a man puts up a house in the District of Columbia he does something that adds to the wealth and stock of conveniences of the whole city, and he instinctively feels that it is wrong that his taxes should be increased for having done so. The poor man with a small and poor house has to submit. A few dollars difference in the assessment will not pay him for the time and trouble of protesting. But the rich man, with the costly house, not merely has more time and larger interests, but finds the difference in the assessment a more important matter. Thus, in both these ways, there are powerful tendencies constantly at work to produce unjust inequality in the taxation of buildings and improvements. These tendencies must act directly and powerfully upon the taxation of land, with which the taxation of buildings and improvements is conjoined.

CITIZENS OF THE DISTRICT RECOMMEND THE ASSESSMENT OF NOTHING BUT LAND VALUES.

Your committee have been much struck with the widespread feeling which they have found among well-informed and thoughtful men that the only way to secure a fair and full assessment of land values in the District of Columbia lies in the abandonment of the attempt to assess improvements and in concentrating the assessment upon the value of land alone, and for reasons such as those we have briefly indicated, your committee are inclined to agree in this opinion.

As representing the views of large and influential property-holders, we desire to call special attention to the communication and draft of bill presented to us by Mr. L. S. Phillips and indorsed by Mr. Brainard H. Warner.

These gentlemen, it will be seen, agree with all the other evidence taken by your committee and with the facts which were stated by the Commissioners of the District in their report to the District Committee of the House after a public hearing on the subject, in declaring that all assessments made in the District for years past have been viciously defective in bearing with undue severity upon the poorer class of taxpayers and unduly favoring the rich. They hold that these effects inhere in the nature of the assessment, which in attempting to arrive at the true cash value of all property imposes a task manifestly impossible, the attempt to carry out which necessarily results in the heavier proportionate assessment of the small homestead than of the large and costly building. As they intimate, it is manifestly impossible for assessors who can only walk or drive through the public streets and look at the fronts of buildings to determine the value of those buildings.

As these gentlemen state, "The first and paramount consideration in taxation should be equality of burden," which, as they say, is impossible under a system that really amounts to nothing more than an extensive system of guessing—a system that in its nature inevitably favors the man of large means at the expense of the man of small means, the large property to the detriment of the small property.

In view of these defects these representative District property-owners therefore recommend that the assessment shall be levied only on the annual rental value of each and every parcel of land. They point out that this would substitute for a system of extensive guessing a method of actual determination—the sums actually paid for the rent of land, or of land and buildings, affording a certain basis by which the assessing officers can determine not only the annual rental value of land that is actually rented by one person to another, but also the annual rental capacity of land that is in use by the owner, or that is held by its owner without use, or devoted by him to an inferior use than that to which land of similar situation is in other cases being put.

The central idea of these large property-owners, whose interests are bound up with the growth and prosperity of the District, seems to be the eminently just one, that each citizen should be called on to pay toward the expenses of the government of the District in proportion to the pecuniary benefits which the growth and improvement of the District and the maintenance of public order, safety, and convenience enables him to receive in additional income, or, rather, makes it possible for him to receive if he chooses to do so.

Your committee conceive this to be a correct principle. They think, with these representative property-owners, that the man who holds land that would yield him income were he to improve it ought to pay as much toward the expenses of the District as he who by improvement actually does receive an income from his land, and they can see how much this equitable method of levying assessments would stimulate improvements and promote the growth and prosperity of the District, at the same time as it lessened the tendency toward inequality.

INTEREST OF CITIZENS OF THE UNITED STATES IN THE TAXATION OF THE DISTRICT.

And while inclined to favor, substantially at least, the recommendations of these large property-owners, your committee are even more inclined to favor it when they take into consideration the rights and interests of a still larger class of citizens. The District of Columbia derives its population, its importance, and its wealth from the fact that it is the capital of the nation. As the national capital, it is the necessary residence for longer or shorter periods of citizens of the various States and Territories brought here by reason of their service in the various legislative, executive, and judicial branches of the National Government, or by business connected with them. As the national capital contains the halls of Congress, the chambers of the Supreme Court, the residence of the Executive, the great libraries, museums, and repositories of information, which the National Government is gradually building up, it has to American citizens a legitimate attraction. For these reasons your committee are of the opinion that the subject of taxation in the Federal District is not a matter to be considered with sole reference to the interests of District property-owners, or even with sole reference to the interests of the residents of the District. As members of the House, we are here as representatives of the people of the United States, and it is because the Constitution holds them to be parties of real interest that we are constitutionally called on to decide how taxes in the District shall be assessed.

National pride and national patriotism prompt, on the part of the citizens of the United States, a desire that the National Capital shall be clean, orderly, convenient, and comely—a desire that has been re-

sponded to by Congress with liberal appropriations for the improvement and beautification of the Federal City. And in addition to this patriotic interest in the government of the District of Columbia the citizens of the several States who are or may be called upon by duty, business, or inclination to visit the National Capital, either for protracted residence or for short visits, have an eminently practical interest in this matter of local taxation. The President of the United States is the only citizen for whom a residence has been by law provided, and with that single exception every citizen who is called to the National Capital finds it his primary care and in most cases his largest personal expense to provide himself with living accommodations, for which he must secure the use of some building or part of a building, whether it be residence, hotel, or boarding house. As any assessment that falls on the erection and maintenance of buildings necessarily checks building and increases the cost while diminishing the comfort of living accommodation, it thus tends to lessen the comfort and increase the expenses of all citizens who are called on to reside in or visit Washington. On the other hand an assessment on the annual rental value of lands such as these property-owners recommend has no tendency either to diminish house accommodation or to increase its cost. It simply takes from what the owner of land would otherwise put in his own pocket, and, by making it as costly to him to keep land idle as to fully improve it, would tend to stimulate building and increase accommodation. It would thus promote the comfort and economy of citizens residing in or visiting the National Capital, and instead of discouraging enterprise and improvement would tend to discourage the business of monopolizing land that is needed for the purposes for which the Federal District was formed.

JUSTICE OF THE PROPOSITION TO RAISE THE ENTIRE REVENUE
FROM TAXES ON LAND VALUES.

Or to consider the matter in a somewhat different way: The expenditures of the United States in the Federal District and the large sums which are contributed from the National Treasury toward the municipal expenses of the city of Washington and toward its improvement and beautification have the effect of adding directly and indirectly to the value of land. It is therefore both just and expedient that the assessment for the revenues that are needed by the District of Columbia should be levied on those who receive the pecuniary benefits of this added value, and not levied in such ways as to ultimately fall upon citizens who receive no pecuniary benefits.

And when it is remembered that the value of improvements is constantly depreciating, and that of the total taxable value of the District, they constitute less than one-fifth, amounting in round numbers to but seventy-three millions out of four hundred and ninety-five millions, while the value of land, amounting already to twenty-four millions of annual rent, is appreciating at the rate of over forty millions a year, it would seem but simple justice to do away with the burden now levied on the depreciating property, even though it necessitated a slight increase in the taxation of that property so constantly and so enormously appreciating. Out of the twenty-four millions a year which the land-owners of the District are already enabled to appropriate to themselves, and the forty millions a year which is being added to the salable value of their property by the growth of the District, it is surely but little to ask that they should contribute less than \$500,000 more

than they now contribute to municipal expenses. A tax rate of 51 cents on the \$100 is now needed to raise the required revenue from land and improvements, but a tax of only 59 cents on the \$100 would raise it from land alone, leaving all improvements exempt from taxation.

LAND VALUES FURNISH AN AMPLE SOURCE OF REVENUE.

While your committee do not deem the question of how far the National Treasury should be called on to defray the expenses of the District Government to be within the scope of the resolution submitted to them, they would report that their examination shows that the collection of only 12½ per cent of the annual rental value of the land of the District—estimated at \$24,000,000—would suffice to raise the District's proportion of the increased sum of \$6,000,000 annual revenue which the District Commissioners ask; that the collection of 25 per cent would suffice to raise the whole \$6,000,000 without taking one penny from the National Treasury; that the collection of 50 per cent would give, without any tax upon improvements or any contribution whatever from the National Government, \$12,000,000 of revenue a year, or more than twice the amount the Commissioners ask for—a sum which properly used would soon make the National Capital the most beautiful and delightful city in the world. And this could be done without the slightest tendency to decrease the comfort or increase the cost of living of any resident or visitor. On the contrary, the very weight of the tax thus levied on land values would check speculation and make land needed for buildings much easier to be had by those who wanted to improve it, an effect which in its turn would so increase population and prosperity as to greatly increase legitimate land values and thus increase the fund that could in this manner be drawn on for all District needs.

EFFECT OF CONGRESSIONAL LIBERALITY IN ADDING TO LARGE FORTUNES AND INCREASING THE COST OF LIVING.

But, on the contrary, if the National Government were to assume the entire cost of the District Government, no one would be benefited except the land-owners. They could and would still demand from tenants the full rental of land regardless of the remission in the assessment on it, and the effect of this net increase in the profits of land-owning would be to raise the selling value of land and to greatly stimulate land speculation. Thus the effect of such liberality towards the Federal District on the part of the Congress would ultimately be only to increase enormously a few large fortunes and to drive a greater number of citizens into narrower quarters and make it more difficult for them to live. And if, while refraining from assessing land values, still more lavish appropriations were made from the proceeds of general taxation for the purpose of improving and embellishing the National Capital, the effect would simply be to increase a few great fortunes and to hasten the crowding of the body of its population into flats and tenement houses, and, behind stately avenues lined with palaces, to raise noisome slums.

Already the effect of the growth and improvement of the Federal District has been, by the increase of land values, to give hundreds of millions to a fortunate few, but to increase the cost of living to such a degree as to make it a serious question with many of the officers and employés of the National Government who are called on to live here.

And if this tendency continues not only will the salaries paid to employes of the United States soon become entirely inadequate to the scale of living for which they were intended, but the Capital of the American Republic must ere long present such a contrast between luxuricus idleness and poverty-stricken workers as can be exceeded in no capital of professedly aristocratic countries.

Or to look at the question in still another way:

A TAX ON THE VALUE OF LAND THE ONLY JUST TAX.

Analysis shows that the rental value of land does not arise from any expenditure of labor or investment of capital by the owner of the land. The value which the owner of land may create by the expenditure of labor and capital is a value which attaches to buildings or improvements. The value which attaches to the land itself comes from the growth of the whole community. It is this growth and improvement of the community itself which has given to land in certain parts of the Federal District a value amounting to over three millions of dollars an acre. If the owners of this land had left their land idle, if they had been absentees or idiots, this value would have attached to the land to the same extent and in the same manner. It comes from the growth of population and general improvement, and is primarily due to the fact that this particular place has been selected as the site of the National Capital. Thus every one who adds even temporarily to the population and business of Washington does something to add to the value of the land, something to increase a fund which may be taken to defray all the expenses of government without levying any tax on legitimate property or improvement, or which will in any way increase the cost of living. No matter how he lives, so long as he lives here, every resident must directly or indirectly contribute to the rental value of land. In this way every resident, and, indeed, every sojourner, may be said, in what he pays for the use of land, even though it be for a single night's lodging, to pay a just tax, sufficient to provide for the legitimate expenses of the local government and to make the most ample public improvements. But if the individual land-owners are permitted to put the proceeds of this tax in their pockets and taxes are then levied that fall on use and consumption, the body of citizens are really twice taxed.

CONCLUSIONS OF THE COMMITTEE.

The reasons thus briefly indicated lead your committee to believe that the principle of confining the assessment of taxes in the District to the annual rental value of land, is as conformable to the interests of the people of the several States, as it is to the interests of the residents of the District of Columbia, and to the interests of the property-owners represented by the gentlemen who have urged it upon us.

But as the assessment of land by its annual rental value involves a considerable change from the usual American custom of assessing on the selling value, your committee, while not disposed to question the reasoning of the taxpayers who urge it, hardly deem it prudent to recommend at once so radical a change. Since it is always the actual or expectant rental value of land which fixes its selling value, we do not see any real necessity for so great a change, at present, at least. We therefore recommend such change in the subject of assessment, as will embody the principle urged upon us by the representative taxpayers of the District of whom we have spoken, and which we find generally

commended by the intelligent men whose views our investigation has brought to our attention; that of exempting improvements from the assessment, and confining it to the value of the land itself. But we recommend, at the same time, such provisions for the collection of information as to the actual rental value of land, as will not only furnish reliable means of determining selling value, but will make it easier at any future time to change the subject of taxation from the selling value to the rental value of land.

That the change we recommend in the subject of assessment would powerfully contribute with the changes we recommend in the manner of assessment to secure equality, there can be no doubt. When, instead of being distracted by various subjects of taxation, public attention is concentrated upon one, and that a subject which from its nature can not be hidden or concealed but *can* be perceived by everyone who walks or rides along the public streets, public opinion will be called in to secure equality. And while there is a manifest injustice in attempting to tax the citizen in proportion to what he does to add to the general wealth, there is such a manifest justice in taxing the citizens in proportion to the pecuniary benefits arising from the general growth which he receives, that we are inclined to believe that the result of the change we propose will soon be to show that there is a public conscience on the subject of taxation.

But while some may object that we have not deemed it prudent to go so far in our recommendations as has been urged upon us by taxpayers of the District, there may be others who will ask why Congress should attempt to cure in the Federal District evils which exist in greater or less degree in all other large American cities. Our answer is that there can be no better place to attempt to apply a cure to these evils than in the capital of the nation, and this is made all the more incumbent by the fact that one-half of the entire municipal burden of this city is borne from the National Treasury—that is to say, from taxes which fall with heaviest weight upon the hard earnings of workers all over the country. Under some circumstances there may be a good deal of truth in what was said by some of the witnesses whom we have examined—that the proportion of the assessment makes no difference provided it is levied on all pieces of property in the same proportion. But this is manifestly not true where the General Government is paying one-half of the aggregate expenditure. The people of the United States are at least entitled to know just what is the true value of the land and rate of taxation of the Federal District.

RECOMMENDATION.

Your committee therefore recommend the following resolution:

Resolved, That the House conferees on District appropriation bill H. R. 6746 be instructed to have inserted in its proper place the following substitute clause:

FOR ASSESSOR'S OFFICE: For one assessor, whose duties shall be as now required by law, except that he shall have no voice in the assessment, or equalization of assessment, of any real estate after the first Monday in June, 1892, three thousand dollars. After the first Monday in June a permanent board of equalization, composed as follows, shall have exclusive power to increase, diminish, or make assessments on real estate in the District of Columbia in the manner hereinafter provided. There shall be a president of the board, who shall hear publicly both sides of all questions of assessment, and decide from the evidence the amount at which each piece of real estate shall be assessed, and shall in every case

determine the true amount in lawful money under ordinarily favorable circumstances that such real estate would bring if sold at public or private sale on the usual terms, one third cash and the balance in one and two years. He shall make all rules and regulations governing the board; and as to the manner in which notice shall be given to property owners; and is empowered to require sworn reports as to the value and rental of property by owners or agents; and shall hold all meetings with open doors. He is hereby empowered to send for persons and papers within the District of Columbia, and process therefor shall be served by the police of said District; and to examine witnesses under oath; but no witness shall receive compensation. The president of the board shall also appoint and remove at his pleasure one clerk, at a salary of twelve hundred dollars per annum, to keep a journal of the proceedings and to perform such other duties required of him. Said president of the board shall receive a salary of four thousand dollars per annum.

The other member of the board of equalization shall be a prosecutor, who shall represent the interests of the District of Columbia and the United States Government in all applications made for the change of assessment, and by his own motion or at the request of any citizen or member of Congress shall call attention to all cases in which an assessment has not been made or is too low, and shall present to the president of the board all attainable evidence. He shall appoint and remove at pleasure a draftsman at fourteen hundred dollars per annum, to make the maps hereinafter described and perform such other duties as may be required. The salary of the prosecutor shall be three thousand five hundred dollars per annum. The president and prosecutor of the board of equalization shall be appointed at any time after the first day of June, 1892, for the term of one year, by the President of the United States, who shall also fill, either temporarily or for the remainder of the term, any vacancy occurring in either office.

The journal of the board shall be open for public inspection during office hours. It shall commence with a statement of the total assessment of land values in the District of Columbia on the first Monday in June, 1892, taking for that purpose, for the cities of Washington and Georgetown, the assessment now being prepared, and for the remainder of the District the last assessment. The journal shall thereafter be made to show the amount added to or taken from the aforesaid total assessment, so that the total assessed value of land in the District shall at all times appear. Forty days before the first of November and the first of May in each year the journal shall be closed, and the total amount of the assessment, less the amount assessed on land by law exempt from taxation, shall be reported over the signature of the president and prosecutor of the board to the Commissioners of the District of Columbia, who shall determine and fix the rate of taxation necessary to raise the revenue required, not exceeding the limit fixed by law. The Commissioners shall transmit said report and the rate to the assessor and collector to guide them in the preparation of the tax duplicate for that period of six months.

There shall be kept in the office of the board of equalization two sets of maps under the direction of the prosecutor, one set showing the District of Columbia in not more than four sections, with all the subdivision of squares and tracts in the outlying districts; and on each square and tract shall be marked the contents in square feet or acres, the total land value, and the average valuation per square foot or acre, according to the assessment on the first Monday in June, 1892. The other set of maps shall show each square or tract on a separate sheet in book

form, designated by the number of the square or tract, which square or tract shall be subdivided into lots showing each separate ownership, and on each such subdivision there shall be marked the contents in square feet or acres, the total land value and the value per foot or acre, according to the assessment on the first Monday in June, 1892. And thereafter changes in assessments on land or new assessments shall be marked on the face of both sets of maps until such time as in the judgment of the prosecutor new sets of maps become necessary. On these maps all public grounds and Government property on which no assessment is levied shall be indicated by a distinct color; and another color shall indicate all private grounds assessed, but by law exempt from taxation. The assessor shall turn over to the board of equalization all maps and plats now in his possession.

All maps shall be open to public inspection during office hours.

The Board of Equalization shall as soon as practicable after the closing of the books make an estimate of all taxable land in the District of Columbia, showing the annual rental value of each square and tract, exclusive of improvements, ascertaining as nearly as possible the annual rent that the land would bring if put to its best use. The amount of this annual rental so ascertained, with a statement of the amount of the taxes levied upon the land represented by it, and showing what percentage of the annual value is taken by taxation, shall be reported by the president of the board to the Commissioners of the District of Columbia for publication in the annual report.

The Commissioners of the District of Columbia shall furnish the board of equalization with a suitable place in which to meet.

All laws or parts of laws conflicting with this paragraph are hereby repealed.

COMPARATIVE VALUE OF LAND AND IMPROVEMENTS.

TABLE No. 1.—WASHINGTON CITY.

[Compiled from the assessors' reports for Washington City, showing the assessed value of land, of improvements, and of both together; the percentage of increase in assessment from year to year; and the percentage that land assessment bears to the total assessment each year. The table also shows percentage of average increase for each year and average percentage that land bears to total assessment. The last line, showing the result for the year ending June 30, 1893, is estimated on the basis of increase exhibited by twenty-seven typical blocks in which land increased 160 per cent and improvements 7 per cent over the previous assessment, and is subject to whatever change is made in the assessment by the board of equalization.]

Fiscal year ending June 30—	Value of land.	Value of improvements.	Total.	Percentage of increase in value of land.	Percentage of increase in improvements.	Percentage of increase in total assessed value.	Percentage of land value to total assessed value.
1880	\$38,867,440	\$37,218,500	\$76,085,940	.....	.....	.....	51
1881	38,954,320	38,302,290	77,256,610	.....	3	1	51
1882	38,099,043	40,416,750	78,515,793	.....	6	2	49
1883	38,800,398	41,815,050	80,615,448	2	3	3	48
1884	40,759,423	39,533,995	80,293,418	5	.....	.....	51
1885	40,816,055	42,009,200	82,825,255	.....	6	3	49
1886	41,160,201	43,971,950	85,132,151	1	5	3	48
1887	50,279,086	46,104,400	96,383,486	22	5	13	52
1888	49,765,547	49,664,750	99,430,297	.....	8	3	50
1889	49,648,393	53,237,650	102,886,043	.....	7	3	48
1890	64,458,603	55,155,000	119,613,603	30	5	16	53
1891	64,381,519	58,728,700	123,110,219	.....	6	3	52
1892	64,257,934	62,125,650	126,383,584	.....	6	3	51
Average .....	.....	.....	.....	5	5	4½	50
1893	167,070,728	66,474,446	233,545,174	160	7	87	73

TABLE No. 2.—DISTRICT OF COLUMBIA.

[Compiled from the assessors' reports for the District of Columbia, showing the assessed value of land, of improvements, and of both together; the percentage of increase in assessment from year to year; and the percentage that land assessment bears to the total assessment each year. The table also shows percentage of average increase for each year and average percentage that land bears to total assessment. The last line, showing the result for the year ending June 30, 1893, is estimated on the basis of increase exhibited by twenty-seven typical blocks in which land increased 160 per cent and improvements 7 per cent over the previous assessment, and is subject to whatever change is made in the assessment by the board of equalization.]

Fiscal year ending June 30—	Value of land.	Value of improvements.	Total.	Percentage of increase in value of land.	Percentage of increase in value of improvements.	Percentage of increase in total assessed value.	Percentage of land value to total assessed value.
1880	\$45,940,296	\$42,040,060	\$87,980,356	.....	.....	.....	52
1881	45,689,778	43,263,300	88,953,078	.....	3	1	51
1882	44,824,140	45,484,355	90,308,495	.....	5	2	50
1883	45,556,675	46,976,990	92,533,665	2	3	2	49
1884	44,966,598	45,882,076	90,848,674	.....	.....	.....	49
1885	47,161,039	46,341,425	93,502,464	5	1	3	50
1886	47,469,942	48,583,387	96,053,329	1	5	3	49
1887	57,176,151	51,120,950	108,297,101	20	5	13	53
1888	56,704,378	55,040,450	111,744,828	.....	8	3	51
1889	56,585,903	58,899,450	115,485,353	.....	7	3	49
1890	76,714,819	60,911,600	137,626,419	36	3	19	56
1891	76,561,141	65,048,750	141,609,891	.....	7	3	54
1892	76,451,028	69,030,250	145,481,278	.....	6	3	53
Average.....	.....	.....	.....	5 $\frac{1}{3}$	4 $\frac{2}{3}$	4 $\frac{1}{2}$	51
1893	198,772,672	73,862,367	272,635,040	160	7	87	73

RELATIVE VALUE OF IMPROVEMENTS GREATEST IN SMALL HOMES.

TABLE No. 3.—TWELVE BUSINESS SQUARES AND TWELVE HOME SQUARES.

[Compiled from the report of the assessor for 1889 and 1890, in which the value of improvements on twelve of the best business squares in Washington is compared with that of twelve squares occupied by small homes.]

No. of squares.	Business squares.		No. of squares.	Small-home squares.	
	Value of land.	Value of improvements.		Value of land.	Value of improvements.
224	\$420,897	\$255,200	365	\$93,624	\$194,400
225	446,316	254,000	366	73,220	150,200
253	453,757	323,400	577	27,637	43,500
254	553,837	412,200	623	87,290	260,100
289	260,193	138,500	628	63,714	96,800
290	276,236	144,100	638	16,769	36,300
320	151,637	70,900	812	25,982	74,000
321	181,798	157,300	866	23,600	65,000
346	163,969	119,000	876	26,554	41,100
347	169,318	117,100	898	29,802	34,400
376	349,675	241,500	1003	22,331	74,200
377	387,125	341,500	1020	24,445	39,000
	3,814,758	2,574,700		514,968	1,109,000

On business squares the improvements are **40** per cent and on small-home squares **68** per cent of the total value.

TABLE No. 4.—TWELVE BUSINESS SQUARES AND FIFTEEN HOME SQUARES.

[Compiled from the report of the assessor for 1889 and 1890, in which the value of improvements on twelve of the best business squares in Washington is compared with that of fifteen squares occupied chiefly by small homes, being the twenty-seven typical squares.]

No. of square.	Best business squares.		No. of square.	Small-home squares.	
	Value of land.	Value of improvements.		Value of land.	Value of improvements.
224	\$420,897	\$255,200	102	\$180,088	\$100,000
225	446,316	254,000	126	304,452	321,200
253	453,757	323,400	239	173,805	262,600
254	553,837	412,200	280	123,674	145,600
289	260,193	138,500	369	160,498	199,200
290	276,236	144,100	374	153,035	117,028
320	151,637	70,900	509	67,034	151,100
321	181,798	157,300	674	48,722	91,850
346	163,969	119,000	675	59,117	177,700
347	169,318	117,100	721	107,376	346,000
376	349,675	241,500	846	16,201	127,300
377	387,125	341,500	903	24,703	22,600
			924	22,653	18,800
			934	16,947	20,300
			1003	22,331	74,200
	3,814,758	2,574,700		1,480,636	2,175,478

On business squares the improvements are **40** per cent and on small-home squares **60** per cent of the total value.

TABLE NO. 5.—THE SAME SQUARES UNDER NEW ASSESSMENT.

[Compiled from the report of the assistant assessors for 1892 and 1893, in which the value of improvements on twelve of the best business squares in Washington is compared with that of fifteen squares occupied by small homes, being the twenty-seven typical squares.]

No. of square.	Best business squares.		No. of square.	Small-home squares.	
	Value of land.	Value of improvements.		Value of land.	Value of improvements.
224	\$1,237,604	\$255,400	102	\$223,949	\$103,250
225	1,158,168	246,500	126	521,560	324,350
253	1,496,061	341,400	239	276,898	284,350
254	1,555,385	397,600	280	166,948	158,600
289	958,848	182,450	369	253,918	191,000
290	762,648	189,700	374	221,483	155,400
320	629,314	121,350	509	122,395	120,350
321	546,786	157,200	674	98,988	121,950
346	643,687	158,000	675	133,902	253,700
347	479,088	132,100	721	78,218	147,500
376	937,270	265,500	846	41,498	30,000
377	1,026,791	556,650	903	50,751	22,600
			924	48,776	42,100
			934	33,969	22,600
			1003	43,843	117,500
	11,431,650	3,003,850		2,317,096	2,095,250

On business squares the improvements are **21** per cent and on small-home squares **48** per cent of the total value.

AVERAGE RELATION OF LAND AND IMPROVEMENTS.

TABLE No. 6.—TWENTY-SEVEN SQUARES UNDER OLD ASSESSMENT, 1889-'90.

[On twenty-seven typical blocks taken from assessor's published report.]

No. of square.	Value of land.	Value of improvement.
102	\$180,088	\$100,000
126	304,452	321,200
224	420,897	255,200
225	446,316	254,000
239	173,805	262,600
553	453,757	323,400
254	553,837	412,200
280	123,674	145,600
289	260,193	138,500
290	276,236	144,100
320	151,637	70,900
321	181,798	157,300
346	163,969	119,000
347	169,318	117,100
369	160,498	199,200
374	153,035	117,028
376	349,675	241,500
377	387,125	341,500
509	67,034	151,100
674	48,722	91,850
675	59,117	177,700
721	107,376	346,000
846	16,201	127,300
903	24,703	22,600
924	22,653	18,800
934	16,947	20,300
1003	22,331	74,200
	5,295,394	4,750,178

Total land value \$5,295,394
 Total improvement value 4,750,178

Grand total 10,045,572

Land value is therefore **53** per cent of total assessed value.**TABLE No. 7.—TWENTY-SEVEN SQUARES UNDER NEW ASSESSMENT, 1892-'93.**

[Compiled from assistant assessors' reports on twenty-seven typical blocks.]

No. of square.	Value of land.	Value of improvements.
102	\$223,949	\$103,250
126	521,560	324,350
224	1,237,604	255,400
225	1,158,168	246,500
239	276,898	284,350
253	1,496,061	341,400
254	1,555,385	397,600
280	166,948	158,600
289	958,848	182,450
290	762,648	189,700
320	629,314	121,350
321	546,786	157,200
346	643,687	158,000
347	479,088	132,100
369	253,918	191,000
374	221,483	155,400
376	937,270	265,500
377	1,026,791	556,650
509	122,395	124,350
674	98,988	121,950
675	133,902	253,700
721	78,218	147,500
846	41,498	30,000
903	50,751	22,600
924	48,776	42,100
934	33,969	22,600
1003	43,843	117,500
Total	13,748,746	5,099,100

Total land value \$13,748,746
 Total improvement value 5,099,100

Grand total 18,847,846

Land value is therefore **73** per cent of total assessed value.

ASSESSMENTS AND SWORN VALUE.

TABLE No. 8.—ASSESSMENTS AND SWORN VALUE OF HOME PROPERTY.

[Compiled from reports of assessors and of assistant assessors, showing comparative increase in assessments of land and improvements of fifteen squares, situated in different parts of Washington and covered chiefly by small homes. Where more than one witness was examined as to the value of any square, the highest estimate is given.]

No. of square.	Old assessment, 1889-'90.		New assessment, 1892-'93.		
	Value of land.	Value of improvements.	Value of land.	Value of improvements.	Sworn land value.
102.....	\$180,088	\$100,000	\$223,949	\$103,250	\$286,292
126.....	304,452	321,200	521,560	324,350	518,357
239.....	173,805	262,600	276,898	284,350	511,201
280.....	123,674	145,600	166,948	158,600	254,430
369.....	160,498	199,200	253,918	191,000	412,336
374.....	153,035	117,028	221,483	155,400	428,277
509.....	67,034	151,100	122,395	120,350	172,950
674.....	48,722	91,850	98,988	121,950	135,292
675.....	59,117	177,700	133,902	253,700	168,070
721.....	107,376	346,000	78,218	147,500	100,330
846.....	16,201	127,300	41,498	30,000	54,715
903.....	24,703	22,600	50,751	22,600	66,973
924.....	22,653	18,800	48,776	42,100	91,472
934.....	16,947	20,300	33,969	22,600	69,065
1003.....	22,331	74,200	43,843	117,500	66,337
Total	1,480,636	2,175,478	2,317,096	2,095,250	3,336,097

The foregoing shows a gain of **56** per cent in the assessment of land for 1893 over the previous assessment, and on improvements there is a loss of **4** per cent.

While the old assessment was only **44** per cent the new assessment will be **69** per cent of the present true value.

TABLE No. 9.—ASSESSMENTS AND SWORN VALUE OF BUSINESS PROPERTY.

[Compiled from reports of assessors and of assistant assessors, showing comparative increase in assessments of land and improvements of the twelve most valuable squares in the District, lying on both sides of F street, between Ninth and Fifteenth streets, together with sworn estimates of true land values of same squares by witnesses. Where more than one witness was examined as to the value of any square, the highest estimate is given.]

No. of square.	Old assessment, 1889-'90.		New assessment, 1892-'93.		
	Value of land.	Value of improvements.	Value of land.	Value of improvements.	Sworn land value.
224.....	\$420,897	\$255,200	\$1,237,604	\$255,400	\$3,110,995
225.....	446,316	254,000	1,158,168	246,500	3,085,280
253.....	453,757	323,400	1,496,061	341,400	3,152,397
254.....	553,837	412,200	1,555,385	397,600	3,621,899
289.....	260,193	138,500	958,848	182,450	1,831,593
290.....	276,236	144,100	762,648	189,700	2,130,513
320.....	151,637	70,900	629,314	121,350	1,389,470
321.....	181,798	157,300	546,786	157,200	1,454,497
346.....	163,969	119,000	643,687	158,000	1,330,060
347.....	169,318	117,100	479,088	132,100	1,468,261
376.....	349,675	241,500	937,270	265,500	2,447,885
377.....	387,125	341,500	1,026,791	556,650	2,810,332
Total	3,814,758	2,574,700	11,431,650	3,003,850	27,833,182

The foregoing shows a gain of **199** per cent in the assessment of land for 1893 over the previous assessment and only **17** per cent gain on improvements.

While the old assessment was only **14** per cent, the new assessment will be **41** per cent of the present true value.

The present assessment of land devoted to business purposes shows an increase over the last assessment of **199** per cent, while the assessment on moderate residence land has only increased **69** per cent, showing that the increase in assessment has in the main fallen on the most valuable land.

PERCENTAGE OF DIFFERENCE BETWEEN NEW ASSESSMENT OF LAND AND SWORN VALUE.

TABLE No. 10.—BUSINESS SQUARES.

[Comparison of values on land of twelve squares fronting F street, between Ninth and Fifteenth streets, as reported by assistant assessors to committee, with the average values sworn to by witnesses; which average was arrived at by giving each witness' estimate of true value and repeating the assessors' value in the other column.]

No. of square.	Assessed value.	Sworn value.	Per-cent-age.	No. of square.	Assessed value.	Sworn value.	Per-cent-age.
224.....	\$1, 237, 604	\$3, 110, 995	40	346.....	\$643, 687	\$1, 330, 060	48
224.....	1, 237, 604	3, 042, 608	46	346.....	643, 687	1, 113, 730	58
225.....	1, 158, 248	3, 085, 280	38	347.....	479, 088	1, 468, 261	33
253.....	1, 496, 061	3, 076, 871	49	347.....	479, 088	1, 172, 315	41
253.....	1, 490, 061	3, 152, 397	47	376.....	937, 270	1, 963, 531	48
253.....	1, 496, 061	2, 965, 506	50	376.....	937, 270	2, 447, 885	38
254.....	1, 555, 385	3, 621, 899	43	377.....	1, 026, 791	1, 408, 228	73
289.....	958, 848	1, 831, 593	52	377.....	1, 026, 791	2, 810, 332	37
290.....	762, 648	2, 130, 513	38				
320.....	629, 314	1, 389, 470	45				
321.....	546, 786	1, 454, 497	38				
				Total	18, 742, 292	42, 575, 971	44

Assessed value is therefore **44** per cent of true value.

TABLE No. 11.—PARTS OF SELECT BUSINESS SQUARES.

[Comparison of values on land fronting F street, between Ninth and Fifteenth streets, reported by assistant assessors to committee with value sworn to by witnesses.]

Part of square.	Assessed value, 1892-'93.	Sworn value.	Per-cent-age.
254	\$871, 859	\$1, 901, 774	46
289	421, 209	875, 040	48
290	427, 170	812, 717	53
320	251, 975	587, 900	43
321	239, 497	521, 440	46
377	851, 564	1, 833, 795	46
Total	3, 063, 274	6, 532, 666	47

Assessed value is therefore **47** per cent of sworn value.

TABLE No. 12.—SQUARES CHIEFLY SMALL HOMES.

[Comparison of values on land used chiefly for small homes reported by assistant assessors, with the average values sworn to by witnesses; which average was arrived at by giving each witness's estimate of true value and repeating the assessors' value in the other column.]

<i>Square.</i>	Assessed value, 1892-'93.	Sworn value.	Per- cent- age.
102	\$223, 949	\$286, 292	78
126	521, 590	518, 357	101
239	276, 898	408, 648	68
239	276, 898	511, 201	54
280	166, 948	229, 732	73
280	166, 948	254, 430	66
369	253, 918	407, 930	62
369	253, 918	412, 336	62
374	221, 483	402, 655	55
374	221, 483	428, 277	52
509	122, 395	142, 021	86
509	122, 395	172, 950	71
	2, 828, 823	4, 174, 829	68

Assessed value is, therefore, **68** per cent of sworn value.

TABLE No. 13.—SQUARES ALL SMALL HOMES.

[Comparison of values on land used for small homes, as reported by assistant assessors, with values sworn to by witnesses.]

<i>Square.</i>	Assessed value, 1892-'93.	Sworn value.	Per- cent- age.
674	\$98, 988	\$135, 292	73
675	133, 902	168, 070	80
721	78, 218	100, 330	78
846	41, 498	54, 715	76
903	50, 751	66, 973	76
924	48, 776	91, 472	53
934	33, 969	69, 065	49
1003	43, 843	66, 337	66
	529, 945	752, 254	70

Assessed value is therefore **70** per cent of sworn value.

TABLE No. 14.—AVERAGE OF ALL CLASSES.

[Comparison of assistant assessors' values with values made by sworn witnesses on the several kinds of land.]

<i>Kind.</i>	Assessed value, 1892-'93.	Sworn value.	Per- cent- age.
Business squares, Table 10.....	\$18, 742, 292	\$42, 575, 971	44
Parts of select business squares, Table 11.....	3, 063, 274	6, 532, 666	47
Squares chiefly small homes, Table 12.....	2, 828, 823	4, 174, 829	68
Squares all small homes, Table 13.....	529, 945	752, 254	70
	25, 164, 334	54, 035, 720	47

Assessed value is therefore **47** per cent of sworn value.

CONCLUSIONS.

The following conclusions are drawn from the foregoing tables:

Assessed values in the twenty-seven typical squares in the city of Washington for fiscal year ending June 30, 1892:

Land	\$5, 295, 394
Improvements	4, 750, 178
Total	10, 045, 572

Land assessment is therefore 53 per cent of total assessment.

Assessed values in the twenty-seven typical squares in the city of Washington for fiscal year ending June 30, 1893:

Land	\$13, 748, 746
Improvements	5, 099, 100
Total	18, 847, 846

Land assessment is therefore 73 per cent of total assessment.

Increase in new assessment over old:

Land	\$8, 453, 352
Improvements	348, 922
Percentage of increase on land	160
Percentage of increase on improvements	7

Increase in total assessment is therefore 87 per cent.

Assessed value of all the taxable land and improvements in the District of Columbia for the fiscal year ending June 30, 1892:

Land	\$76, 451, 028
Improvements	69, 030, 250
Total	145, 481, 278

Assessed value of land is therefore 53 per cent of total assessed value.

The new assessment being 160 per cent more on land and 7 per cent more on improvements than the old assessment, the probable assessed value for the fiscal year ending June 30, 1893, assuming that the Board of Equalization make no increase, will be as follows:

Land	\$198, 772, 672
Improvements	73, 862, 367
Total	272, 635, 040

Assessed value of land will therefore be 73 per cent of total.

The average increase in the assessed value for the last thirteen years from 1880 to 1892, for the entire District as is shown by Table 2:

Average percentage of increase in value of land	5 $\frac{1}{2}$
Average percentage of increase in value of improvements	4 $\frac{2}{3}$
Average percentage of increase in total assessed value	4 $\frac{1}{2}$

The percentage of increase of the new assessment over the old shows:

Percentage of increase in value of land	160
Percentage of increase in value of improvements	7
Percentage of increase in total assessed values	87

While each year for the past thirteen years the assessment on land and improvements has been substantially the same in amount, the indications, judging from the twenty-seven typical blocks, are that the assessment for the entire District will be for 1893:

On land	\$198, 772, 672
On improvements	73, 862, 367
Excess of land over improvements	124, 910, 305

This increase of practically \$125,000,000, is, in the judgment of the committee, almost entirely due to the agitation and investigation of inequalities and under-assessments of land values in the District.

In proof of this we call attention to square 253, the assessment of which between two investigations only one week apart, was raised from \$907,439 to \$1,496,061, an increase of \$588,622.

Almost all of this increase in assessed value has been on valuable business land. While the increased assessment falls with enormously heavier burden on the most valuable land, it is relatively and absolutely lighter on residence land, owing to a correction of the gross inequality of assessment that has hitherto shifted the greater part of the weight from the former to the latter.

TRUE LAND VALUE.

The assessed value of land in the District for the fiscal year ending June 30, 1893, will probably be, as shown in the foregoing tables, about \$200,000,000, which, judging from the ratio exhibited by the twenty-seven typical blocks, is only 47 per cent of the true value—\$423,000,000.

A tax rate on the true value of land in the District of 59 cents on each \$100 would raise \$2,500,000, being one-half of the amount now annually appropriated for District purposes.

A rate of 71 cents on each \$100 would raise \$3,000,000, one-half the amount estimated by the Commissioners as necessary for District purposes.

ANNUAL INCREASE IN LAND VALUE.

A 10 per cent annual increase, the minimum rate testified to by witnesses before the committee, there would be an increment to land values of \$42,300,000 each year. This represents the annual profit of land-owners, and when it is considered that improvements in the District are only \$73,000,000, or one-fifth of the total, it seems entirely just that taxes falling on the latter depreciating property—improvements—should be shifted to that part of the taxable value that receives such an enormous increase each year—land.

COUNTY PROPERTY.

The committee took no testimony as to land values outside of the cities of Washington and Georgetown, but unofficially they learn that the county contains nearly 40,000 acres, some of the least valuable of which was taken to form Rock Creek Park and the Zoölogical Garden, for which the Government paid about \$1,400,000 or \$700 an acre. Estimating all the land in the county to be worth no more than that, the total assessment should have been \$28,000,000. Instead of that it was assessed at less than \$10,000,000. Some of the land lying outside of Boundary street and forming a part of the county proper has been sold at the rate of from \$8,000 to \$10,000 an acre, and the lowest estimate the committee could get on the entire 40,000 acres was over \$100,000,000. This shows that the inequalities in assessment of the county are very great, and probably the land now stands assessed at a good deal less than one-tenth of its real value. It must be remembered that in what is defined as the county are such places as Le Droit Park, Eckington, Brookland, Tennallytown, Mt. Pleasant, Anacostia, Brightwood, Washington Heights, Columbia Heights, etc.

DIFFERENCES IN THE COMMITTEE.

In the original draft of the report proposed by Mr. Johnson the substitute clause in the appropriation bill as recommended to the House provided for the assessment of nothing but the value of land. On vote of the committee this was overruled by the two other members, who deemed such a proposition at the present time too radical, and in accordance with this vote the recommendation has been changed to provide for the assessment of improvements as well as land values.



181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000
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MAP

OF THE

CITY OF WASHINGTON

TWENTY-SEVEN TYPICAL SQUARES

TO ACCOMPANY THE

REPORT

OF THE

SPECIAL COMMITTEE OF THE HOUSE OF REPRESENTATIVES
OF THE UNITED STATES

INVESTIGATE TAX ASSESSMENTS
DISTRICT OF COLUMBIA

Twelve squares of the most valuable business property
Fifteen squares of the residential property, chiefly 2nd

INVESTIGATION OF TAX ASSESSMENTS IN THE DISTRICT OF COLUMBIA.

MONDAY, *April 18, 1892.*

The committee met at 11 o'clock a. m., at the room of the Committee on the Territories, pursuant to adjournment at the preliminary meeting, to begin an investigation of the system of tax assessments in the District of Columbia.

At this meeting there were present the chairman, Hon. Tom L. Johnson, and Hon. Joseph E. Washington; absent, Hon. J. W. Wadsworth, who had asked and obtained leave of absence from the House on account of death in his family. There were also present the three assistant assessors of the District of Columbia, Messrs. Frederick L. Moore, George F. Dawson, and John F. Cook.

Mr. DAWSON said: Mr. Chairman, I suggest that it would save the time of the board of assessors, which is very limited, if one of their number could be allowed to make his statement and be delegated to act for the absent members, and the other members of the board be permitted to return to their office.

The CHAIRMAN. I think that is a good suggestion. Some one of you, no doubt, can arrange to be present when called upon from now on after we get through with this meeting, and give any information the committee desires; that is, it will not be necessary for all of you to be present, but for this preliminary investigation we would like a statement from each one of you, and we will hereafter arrange it in the manner suggested by you.

Now, if two of you gentlemen will be good enough to retire, we will ask Mr. Moore to remain.

Whereupon Messrs. Dawson and Cook complied with the request of the chairman.

TESTIMONY OF FREDERICK L. MOORE.

FREDERICK L. MOORE, being duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I have been a merchant and manufacturer up to three years ago, when I gave up the business. Since that time for several years I did nothing; I had retired from business, and afterwards went into the real estate and insurance business, in which I remained until I was induced to take this office. I am one of the assistant assessors of the District of Columbia.

Mr. WASHINGTON. How are the assessors appointed?

A. By the Commissioners.

Mr. WASHINGTON. For what term?

A. Well, it was understood that they were to be perpetual; that it was to be a perpetual office, and that the board of assessors was to be a permanent board.

Mr. WASHINGTON. When were you appointed?

A. I entered the office July 1 last.

Mr. WASHINGTON. This assessment is only made every three years?

A. Yes, sir. This is the first term of our board; heretofore they have had from twelve to twenty-four assessors, dividing the District into sections, and each man would have his own district.

By Mr. WASHINGTON:

Q. Was the law under which the old assessors were appointed changed by Congress?—A. Yes, sir; last session, in an appropriation bill doing away with that old way by appointing a permanent board of assessors.

Q. And fixing the salary of the board?—A. Yes, sir; fixing the salary at \$2,500 a year.

Q. Now, were you appointed for one year or for a longer period?—A. When I was asked to take this position it was with the understanding that it was to be a permanent one and that the salary should be as near \$5,000 as they could make it.

Q. Per annum?—A. Yes, sir; they made me no promise, of course, but the statement was that they would urge the salary to be equal to what I was supposed to be making at that time.

The CHAIRMAN. Who asked you to take it, Mr. Moore?

A. Commissioner Ross came to my office and asked me to take it.

The CHAIRMAN. And it was he who said he would try to make it as near \$5,000 as possible?

A. He said the salary would be \$2,500. I said that was no money for me, that I could make a great deal more, and he said, "If you will accept it we will do what we can to have your salary raised." I said \$5,000 would not pay me, and he said, "We will do all we can to get it raised, and I think there will be no trouble in getting it to \$3,500 next year, anyway." I told him that I did not want the place, and it was at a great sacrifice that I took it. I told him I had large business interests, and he urged me to take it; and other friends did the same, and I took it.

By Mr. WASHINGTON:

Q. What part of the city do you live in?—A. In Georgetown.

Q. Do you know what rule these Commissioners follow in selecting these assessors, about the location?—A. I think it was the idea to select from different sections of the city. I think they selected Mr. Dawson because he was from Capitol Hill, and Mr. Cook because he was from the center of the city, and me, because I was from Georgetown; that was the idea, I think, taking each section because each man would probably be familiar with the property in his own section.

Q. How many years were you in the real estate business here?—A. Six or seven months only. I did not want to go into any business at all; I had worn myself out in business; I had been a manufacturer of fertilizers and still had my property in Georgetown; my clerks succeeded me, and I had retired from business on account of my health. I was broken down with overwork. For fourteen months I did not do anything at all, and then I became anxious to be doing something, and so I took a young man with me and went into the real estate business.

The CHAIRMAN. Under what law do you make these assessments? What are your instructions?

A. Our instructions are—the only instructions we have—are from the old law which compels men to take the true value of the property, whatever it may be, and report to the Commissioners.

The CHAIRMAN. Can you give a reference to the page?

A. No; I do not know about that. It says "its true value." I think those are the words used.

The CHAIRMAN. Your oath, then, and instructions are to assess all property in the District at its true value?

A. I think these are the words used—true value.

The CHAIRMAN. And under that law what do you do?

A. I assess it at what it would bring under adverse circumstances for cash.

The CHAIRMAN. The full amount of what it would bring under adverse circumstances?

A. I mean what a piece of property would bring under adverse circumstances.

The CHAIRMAN. And that is the amount you put down as the assessed value?

A. Yes, sir.

The CHAIRMAN. You do not take a certain percentage of that, but the full amount?

A. Of course in getting at that you have to take a certain percentage, not an absolutely fixed amount; you can not do that. But we know that an article would probably bring 30 per cent less for cash under adverse circumstances than it would bring under favorable circumstances on time; that is my judgment.

The CHAIRMAN. And in answer to my question, then, you state that you take the value under adverse circumstances for cash, and attempt to put that down as the assessed value of the property?

A. Yes, sir.

The CHAIRMAN. You do not after finding that out, say you take two-thirds or three-fourths of that amount?

A. Oh, no; the full amount.

The CHAIRMAN. Then your understanding of the law and your duties is that when you are sworn to ascertain the true value that means the true value under adverse circumstances?

A. Yes, sir.

The CHAIRMAN. That is your interpretation?

A. Yes, sir.

The CHAIRMAN. You do not think it would be the true value to take it under favorable circumstances?

A. No, sir; that would not be its true value; that is a fluctuating value; its value one day is one thing and its value another day another thing. We have an instance where a piece of property has been bid in at \$22.50, and the next time it was put up, within a few weeks, they had a bid of \$18 only.

The CHAIRMAN. Then the reason you do not take the true value under favorable circumstances is that it is fluctuating?

A. Yes, sir; that is it.

The CHAIRMAN. You take the true value under adverse circumstances?

A. Yes; I think when you get down to that you get down to bottom rock on your prices. The true value of anything is only what it will bring you under adverse circumstances.

By Mr. WASHINGTON:

Q. Mr. Moore, then if that be the case, if you think that the market value fluctuates and the true value you stated would be about 30 per cent of what the market value would be, then the true value ought also to fluctuate, ought it not?—A. Well, I can tell you that it would be impossible to get an absolutely fixed rule. Let me give you an instance. If Metzertott's Hall had not been blown down the property in front of Metzertott's Hall would never have sold at the price it did. They had to buy to make good the damages done by that accident.

Q. So that the accident enhanced the value of the property in front of it?—A. Yes, sir; but that, of course, is an isolated case. There are a thousand and one things coming into the consideration. No man can conceive what it is until he engages in it.

Q. Is it not true that your sales of property here are a very good index of the sum total of all these circumstances?—A. It would be if there were honest sales. I can not go and pick you out a man who sold to another man a piece of property at a certain price with a view of booming the rest of the property around, but it is common rumor that real estate men do make such sales. John Smith sells to Thomas Brown a lot for \$3 a foot which is really worth only \$1.50; he puts up the price of all the lots on that square by saying, "I sold so and so a lot for \$3; I will sell you one for \$2.50;" so that you can not rely upon the reports of sales implicitly.

Q. Then your opinion of this average is that it would represent about 70 per cent of the true value under favorable circumstances?—A. From 66 to 70 per cent of what the property is selling for under the most favorable circumstances to-day.

Q. What interest have you in the question?—A. Well, I own perhaps \$50,000 or \$60,000 worth of real estate in the District.

Q. Where is it situated?—A. I have a mill on the Potomac River, two houses on the Chesapeake and Ohio Canal; I have a store on M street in Georgetown; I have a vacant lot on L street, near Vermont avenue; I have a lot in Cleveland heights. I believe that is about all of my real estate.

Q. About \$50,000 or \$60,000 worth of property?—A. Yes, sir; I have not added it up, but I suppose that property under the most favorable circumstances is worth probably \$50,000.

The CHAIRMAN. I want to know whether in your mode of procedure in assessing, you go back and change the value of assessment after you have passed upon it?

A. I think I did call your attention to that fact. We took the map of the city; we started at square No. 1 and we viewed every single square and every house on different squares to No. 1,172, which is over in the Eastern Branch under water. Now, when we came back to the office we considered the values. Mr. Dawson thought one price, Mr. Cook thought another price, and I a third price. Then we began with square 1,172 and worked back this way (indicating).

The CHAIRMAN. One thousand one hundred and seventy-two squares include all the land in the city of Washington and Georgetown, does it?

A. No, only in Washington; there are 131 in Georgetown; these 1,172 are this side of Rock Creek.

The CHAIRMAN. Now you are working on those east of Rock Creek; there are 131 on the other side?

A. Yes, sir.

The CHAIRMAN. That includes all the property in Washington and Georgetown?

A. Yes, sir; there about 1,300 squares in all.

Mr. WASHINGTON. A square does not necessarily mean a block, it might be bounded by three sides?

A. There are a great many triangles. Well, when we got back into the office we took this map with all these blocks on it; block 1172: we began by stating this property is assessed at 5 cents; it is worth 10 or 15 or 20 cents, and in a great many cases we agreed that property was worth double or treble or quadruple, in some instances twelve times, what it was assessed. We went down that square; we started north and south—squares run that way in this city; they begin up here and run down again and up in that way (indicating). Now, when we came down here, for instance (indicating), after having placed all the squares on the east side of Ninth street at a fixed price, when we came down on the other side we found an error, which we corrected. A piece of ground there 80 feet deep and 20 feet front had brought \$1.50. We concluded if we had only put this over here at 70 cents, we must go back there and make that a dollar and five. There are constant alterations in that respect that are made for the purposes of equalization.

The CHAIRMAN. After you passed that neighborhood you do not go back again?

A. No, sir; we just equalize it when we come in.

Q. You do not go back then and correct?—A. No, sir.

Q. How far have you gotten in the final assessment with these blocks referred to; give me the numbers?—A. I think we have gotten back to 373, and that would make about 800 that have been already assessed.

The CHAIRMAN. From 373 up?

A. From 1172 to 372; I give you the reverse order.

Q. Then you have 300 squares still to assess and 131 in Georgetown?—

A. We viewed everything, and each one of us noted down his estimate; Mr. Cook had a field-book and Mr. Dawson and I were furnished with books.

The CHAIRMAN. Then each of you made a valuation?

A. We have valued all down to H street between Tenth and Eleventh; then took in all the squares through to the river; then we commenced at Boundary again.

The CHAIRMAN. Working on a north and south line you have gotten as far as H street between Tenth and Eleventh?

A. We start this morning, I think, at the corner of Tenth and G, on the west side.

The CHAIRMAN. When did you commence work in the office?

A. On the 20th of January we took up the work, we rode around half of the day; until we got through Georgetown some time in February, and we have been in the office ever since.

The CHAIRMAN. In the office since then you have made no field notes?

A. No, sir; we have gotten as far as 800 out of the 1,300 blocks.

The CHAIRMAN. And you have how many weeks now to complete the work?

A. We have to the 31st of May to complete it and to record it in a set of books; there are twelve or thirteen books into which we have to put the amount we have agreed upon from our field books.

By Mr. JOHNSON:

Q. In case of a disagreement as to assessed values between the assistant assessors how do you determine it?—A. Take an instance: Mr.

Dawson will say, "I think that ought to be \$5;" Mr. Cook will say, "I don't;" I will say, "Gentlemen, my assessment is \$3.50, but I am willing to make it \$4." But if it is fixed against my protest, I will write "No," indicating that I do not approve it. Then it comes before the board of equalization. There it will either be confirmed at their figures or go back to mine.

By Mr. WASHINGTON:

Q. Who are the board?—A. The principal assessor, Mr. Trimble, and Mr. Cook, Mr. Dawson, and myself.

Q. I thought it was only three.

Mr. JOHNSON. The assistant assessors are only three.

The WITNESS. They sit only as a board of equalization.

Mr. JOHNSON. Then you are very clear in your opinion that the board is not properly organized as a board of equalization?

A. I am. I think the same jury should not try the same case twice. There should be some right of appeal by the citizen.

Mr. WASHINGTON. You think a man would not be liable to override his own act?

A. I should say for my colleagues that I believe they act conscientiously; and if you knew the anxiety and worry that we undergo I think you would appreciate it.

By Mr. JOHNSON:

Q. Are you able to say whether there is some one man who is universally inclined to put the assessment low?—A. I can not answer for my colleague. I am willing to occupy the position of being the man who is willing to put it low.

Q. Your answer then is that you are the man who is willing to put it the lowest?—A. Yes, sir.

Q. Do you assess personal property like goods in stores?—A. No, sir; we have nothing to do with that.

Q. Who does?—A. The assessor, and it is not done at all, because he can not do it.

Q. You have said he *does not* and *does*.—A. Yes, sir.

Q. He is required to do it, but can't?—A. He can not.

Q. Then it is not done?—A. No; look at the returns. They speak for themselves. The value of the personal property is not assessed at one-third. Look at the small amount of it. It is the veriest farce in the world.

Q. That does not come under your charge?—A. No, sir.

Q. Can you point to the law that requires you to assess only real estate?—A. No, sir.

Q. I think you are mistaken about it.—A. That may be so.

Q. Your instructions from the assessors are to assess only real estate?—A. Yes, sir.

Q. Whether the law requires you to do more than that, you do not know?—A. I do not.

By Mr. WASHINGTON:

Q. Is any member of your board a lawyer?—A. No, sir. Mr. Cook was connected with the District for fourteen years, I think. Since that time I do not think he has had any business except the real-estate business. Mr. Dawson, I think, was a journalist.

Q. You do not ask the owner of any real estate what he considers the value of his property?—A. I do not think that question has been asked.

But in one instance a gentleman who was building houses over in the western part of the city came out when we were there, and I asked him if he had any objection to telling me how much the houses were costing. He was very candid about it, and said "These houses are costing me so much money," mentioning the sum. In one other instance where a man was building two stone houses on Connecticut avenue, I called him out and I said to him, "Are you building these houses?" and he said he was. I asked him if he had any objection to telling me what they would cost. He said, "I took out the permit at \$11,000, as I am building them to sell, but they really will not cost over \$9,000."

Q. Did he know you?—A. He saw the board of assessors' carriage. When I went back I said, "That man says he took out the permit at \$11,000, though they will cost but \$9,000. I think these houses are worth \$13,000." Those are the only two cases, I believe, in which we had any talk with people in regard to the value of their property.

By Mr. JOHNSON:

Q. You keep this assessment secret, so far as you can?—A. Yes, sir.

Q. Why?—A. Because of the annoyance it would give us if we did not. If John Smith knew that we had put the assessment up on his property 50 per cent he would be hounding us in the streets, and at the office, and would declare it was a diabolical outrage. You can see that it would not do for us to let it be known at that time. Then, there might be a sale of the adjoining property which we would learn was bona fide. That might influence us, of course, to change.

Q. You have not met with such a case as that?—A. No, sir.

Q. Do you know of any law for it or is it the instructions of your superior officers to keep this a secret?—A. No assessment is made until the 31st of May. It is subject to change until then.

Q. Is it subject to change afterwards?—A. Only by the board of equalization. Then it is passed upon and every taxpayer can come in and protest if he feels aggrieved.

Q. You would have a right to change it before that time?—A. It is not fixed until the 31st day of July, when it is signed by the board. Then it is fixed for three years and there is no way to change it. It is impossible for these three men to do the work without making an error, and if the board inadvertently make an error there ought to be some way to rectify it through the consent of the Commissioners. A man might come in and say, "Look at this. You have made a terrible mistake." I might look at it and see it. He might say, "I will take 50 cents on the dollar for it at the rate which you have assessed it." There ought to be some relief for that man. These assessors are not infallible.

Q. If it came to your knowledge that you had assessed it too low, you ought to have the right to change it?—A. Yes, sir; but I would not give any board power to change it. It might be influenced to do it, and then this board does not live forever.

Mr. WASHINGTON. You are a native of the District and have lived here all your life?

A. Yes, sir; I have.

TESTIMONY OF GEORGE FRANCIS DAWSON.

GEORGE FRANCIS DAWSON, being duly sworn by the chairman, testified as follows:

By Mr. WASHINGTON:

Q. Mr. Dawson, you are a resident of the District of Columbia?—A. Yes, sir; I reside at No. 227 A street S. E., Washington, D. C., and am one of the assistant assessors for the District.

Q. Were you born here?—A. No, sir.

Q. How long have you lived in the District?—A. About twenty years.

Q. What is your occupation?—A. Well, literary; a journalist.

Q. Have you been a real estate dealer?—A. No, sir; except for myself; I have purchased some property, but never dealt in it.

Q. Were you a journalist at the time you were appointed on this board?—A. Well, I was not connected with any paper.

Q. Were you appointed by the Commissioners?—A. Yes, sir.

Q. What is your understanding of the law under which you were appointed?

The WITNESS. In what respect?

Mr. WASHINGTON. Well, your duties, the duties of the office that you hold, the salary and those things.

A. Well, I would like to say here that it is an office I would not seek at all, and how I got it I do not know. I was notified by Col. Robert, the Engineer Commissioner at the time, to come to his office. I saw some statement in the papers that I was one of the parties to be appointed, very much to my surprise, because it was a position I did not want; its responsibilities were great and the salary attached was not adequate, and I did not want any such position. I went down and saw Col. Robert and had a very long conversation with him and also with Mr. Ross. I told him the objections I had to assuming any such office, and he met them, and the last was as to the inadequacy of the salary, and he stated, and Mr. Ross with him, that a strong, determined, and persistent effort was to be made in Congress to increase the salary of the assessors to something adequate. The figure was \$5,000, which I thought was the least that anyone should have for occupying such a very responsible position; it is a position that involves responsibility, on the one side to the whole community, touching their pockets, the tenderest part, and on the other side to the Government and the people generally. That was agreed to; Col. Robert agreed to it, and Mr. Ross with him. Even then I took an hour to consult my friends about it; I did not want it. I could see beforehand the terrible responsibilities of the position, and I did not court any such responsibilities. However, I finally accepted it and was appointed. Now, that is as to the salary. You want to know the view I take of my duties.

Mr. WASHINGTON. Yes, sir; and the instructions you received. Who instructed you as to your duties; the Commissioners, or did you examine the statutes to see?

A. I examined them for myself, as to my duties. I was a sworn official; I was bound to look at the statutes myself. Further than that, after our appointment, we met informally, had an informal organization, and thought it wise to consult the attorney for the District as to certain points as to the organization we would need, and got a report from him on the subject, and in pursuance of the assurances of that report we

organized as a board; I was elected president, Mr. Cook, secretary, and proceeded to business. We just took that formal action. I suppose you have heard of our methods definitely from Mr. Moore.

Mr. WASHINGTON. When you proceeded to business what plans did you adopt for proceeding?

A. The plan we laid out to follow was that of commencing at square No. 1 and going to the end of the numbers in Washington, and then taking Georgetown afterwards; we proceeded numerically, 1, 2, 3, 4, etc. Each of us had our books and we went in a wagon. The opinion of the attorney for the District was that the board, as a board, must go out and view every piece of property. I quite coincided in that view as to what the law prescribed. I will say this, too, and it is quite important in this connection, that the very first thing we did after receiving that report from the assistant attorney for the District, Mr. Thomas (I presume it was concurred in by the attorney for the District himself, Mr. Hazleton, though it was signed by Mr. Thomas) was to adopt a rule of action. I suggested to the board that it would be a very proper thing, as we were starting, to determine a rule to guide us in our estimate of values. There were two laws which governed us, which are familiar to you, I have no doubt. The terms "value," "true value," and "valuation," occurred in them quite frequently, and I had personally asked the attorney for the District, in making this report on our functions, to also state what if any difference existed in the legal interpretation of those terms; whether he considered value and true value meant one and the same thing. He went a little further than that and suggested something that I had not asked him at all, and that was a rule of valuation which he laid down. I held and still hold—and I think he and his superior, the attorney for the District, coincide in that view now; they so expressed themselves to me—that the board is the only power to pass upon that question. We adopted a rule under those circumstances. I presented to the board my idea in regard to the rule we should work upon, that of basic value, and we passed a resolution that I presented to them, that wherever the terms value, true value, or valuation occur in the law that we should construe it to mean real value, intrinsic value; and that the measure of that intrinsic value is the amount that the property would bring at forced sale under adverse circumstances. The rule was adopted unanimously, and the community seemed to acquiesce in it, judging by the interviews that were published in the Star at the time, with leading people here, leading citizens.

The CHAIRMAN. Is that of record?

A. Yes, sir; so far as the newspaper is concerned.

The CHAIRMAN. Have you the minutes of your meeting that show that resolution?

A. Oh, yes, sir; we can give it to you in the exact language, if you desire.

The CHAIRMAN. We would like you to send us a copy of the resolution.

The WITNESS. Yes, sir; Mr. Cook is the secretary; we will furnish you with a copy with pleasure.

By the CHAIRMAN:

Q. You say the District, the citizens, and newspapers generally indorsed that plan?—A. Well, I speak of the Star; the Star was the paper that seemed to have the interviews with citizens on the subject. The Post may have had something, but the Star certainly had interviews

with citizens in regard to the matter and in regard to the popularity of the appointments.

Q. Your rule would make a very much lower assessed value than a rule to take the most favorable circumstances?—A. Yes, sir.

Q. And the District, you think, were generally satisfied with it?—A. I feel quite confident they were satisfied that it was a just rule, the rule of intrinsic value; and I think it is an impregnable rule; I think that when we reflect, it becomes clearer. I have often illustrated it by what you wear, your watch or breastpin. A person buys a breastpin or watch, or anything of that sort, and he pays a commercial value for it, and he is quite satisfied; that is, for his own personal adornment and for his use and that sort of thing, but the intrinsic value of that watch or breastpin is not what he gave, but what he can get when he is obliged to sell it.

The CHAIRMAN. Under the most adverse circumstances?

The WITNESS. No; I did not say "the most;" I ask to have these words put in—"under adverse circumstances." I was very careful to draw that distinction.

The CHAIRMAN. Under ordinarily adverse circumstances?

The WITNESS. Yes, sir; under the language of the resolution is what I have said, of course; under the "most" adverse circumstances would be ridiculous.

Mr. WASHINGTON. What did your board define or consider to be adverse circumstances?

The WITNESS. Well, when the market is dull, or anything of that sort, when there is no demand, no boom, no unusual demand. I am only giving you my own individual idea of the thing, because each member of the board acts upon his own judgment in applying that rule; and because of that, we naturally have our individual, varying judgements on that score, in making our notes, going around, and also in the review that has taken place in the office, and the re-review that will take place—because our figures are not closed yet, and will not be until the first of June, and even then they will be open for two months for equalization until the first of August. Different minds apply a rule in different ways, and have their reasons perhaps that do not occur for the moment to other minds. There is where the benefit of having a board of three comes in, that you get a general average of the intelligent judgment of three parties. A majority, of course, will rule in the assessments.

Mr. WASHINGTON. I do not think you brought out quite fully the answer to the question, namely, what you consider adverse circumstances. Do you mean a forced sale, a sheriff's sale, or just a sale at auction; what do you consider adverse circumstances in regard to real estate?

A. I should consider a sale at auction a forced sale.

Mr. WASHINGTON. Cash or time or what would you consider?

A. Well, the rule in this District is time; I mean as a rule. Of course there are exceptional cases; but the rule in this District as to the purchase of property, whether at auction or otherwise, is almost invariably one-third or one-fourth cash and the balance in one, two, or three years.

Q. Then, in assessing, you seek to get what you consider the value under adverse circumstances at a sale under ordinary conditions?—A. Yes, sir.

Q. Then do you put down what you believe to be the true value under those adverse circumstances, or do you take a per cent of what you be-

lieve to be that value under adverse circumstances?—A. Well, each operates in its own way. So far as I am personally concerned, I think that perhaps 30 per cent off of what would be a low commercial cash value might be the price that it would bring at a forced sale. I think that is about the way I put it myself.

Q. That would make about 70 per cent of what is ordinarily considered to be the value of property?—A. Yes, sir; somewhere along there. It is a very difficult thing to apply a rule where there are so many differing circumstances, and it is quite impossible to apply it rigidly. You have only to get at it as near as you can. I knew we were bound to have a rule of some sort and follow it in some way, and that is why I presented that rule the first thing.

Q. In making the assessments were you guided at all by what was done three years ago?—A. No; we took—at least I can not speak for others——

Mr. WASHINGTON. Speak for yourself.

A. So far as I am concerned, I am not governed by them. I took with me the old assessments, but I took them for guidance and avoidance. Of course, we have met with gross inequalities. In my own judgment, the present assessment, however fairly made, will be far from equally adjusting things, the present, however, will be a great improvement, I think, on the old.

Q. (By the Chairman.) You think there will necessarily be some guesswork in it?—A. Yes, sir; I say we have not time. Of course, necessarily there is some guesswork; must be, because if we had the actual sales for all the property then there need not be any guesswork, but perhaps in some one block we will not have a single sale to govern us in our review; we have a clerk in our office, as I suppose you know, whose duty, Mr. Moore has probably told you, is to compile the sales that have taken place, from the best source of information he can get, and, of course, we take that as one of our sources of information under the law. We have to take every source of information we can get, and that is one of them, and perhaps the best. Possibly in one square we will have three sales and perhaps in four squares we won't have another; that is, the record of sales during the last two or three years.

Q. (By the Chairman.) Then you would take about 70 per cent. of that sale?—A. Well, no. I will tell you. You may find in a square three different sales of property made nearly about the same time and they will vary 100 per cent. This thing is full of perplexities. It was only the other day that we encountered a square of that sort where one sale, I think, was \$1.58, another was \$2.10, and I think another \$2.40; that is as near as I can remember.

Mr. WASHINGTON. They seemed to be made about the same time.

A. Yes, sir; it is very perplexing. If you undertake a percentage, which sale are you going to take? They all seem to be equally valuable lots; there are no especial reasons for the varying prices. Of course, we have to take local causes into consideration. As we go along there may be a big bank on a lot, and, of course, it will take money to remove that bank, and the adjoining lot may be a graded lot, and the graded lot, of course, is worth more than the other. As I say, where there are sales of that sort it is perplexing. Sometimes we have sales that seem to be bona fide, and yet we know it can not be so; the price is too low. On the other hand, there are sales where it is manifestly too high. I do not know that it is a frequent case at all, but there are such things as sales being made where the true consideration is not

placed in the deed. Now, for one reason or another, it may be put less or it may be put more, for effect. Of course we can not go into methods.

Mr. WASHINGTON. In the manner of proceeding you stated that you commenced at square No. 1, and went through all the squares in the District, reviewing them, and after that you commenced your office work. Please tell us how you commenced that office work.

A. Well, we have each got our notes, of course.

Mr. WASHINGTON. You made notes while you were traveling around; each man made his own notes?

A. Yes, sir. We took the subdivisions and observed how the land looked, and we passed upon the land values, and then went around and took the house values on each square, commencing at the southeast corner of each square; we rode around every square in the city.

Mr. WASHINGTON. And made the notes while you were on the premises?

A. Yes, sir.

Mr. WASHINGTON. You made them separately; each man did his own figuring?

A. Yes, sir; we naturally did not agree in certain instances; then the majority is bound to rule. When we came into the office we took the atlas; we have a very comprehensive atlas. I forget whose it is, but if you gentlemen were at our office you could see our methods perhaps more fully than I can explain them.

Mr. WASHINGTON. You have such an atlas as real estate men have?

A. Yes, sir. Besides that, we have the plat books themselves and the maps. Now sometimes it happened that in making our view-values we could not tell whether there was water or sewers upon the squares—water at any rate—and we had so little time to do it anyway, that we could not afford to be examining all these things too closely on the ground unless they were right apparent to us. But in the office there is a map which shows the water service; there is a map which shows the improvement of the street surface, and a map that shows the sewers. Then, besides, there is the atlas which we use in connection with the other maps. Of course we may have put down a view-value under misapprehension, supposing there was water there or a sewer there. That would be cured in the office by seeing whether water or sewer or any other improvements had been made since we were there, and we had overlooked it. Now, as I say, we went from 1 up as far as the figures go, up to 1,200, I believe; then we came back in the office, reviewing our work backwards; and that is what we are doing now. Of course we are open to anything in the line of information all the time. There is not a value put down now, or that will be put down in a month from now, that may not be changed before the 1st of June. It may not be, perhaps; but our assessment will not be made until the 1st of June, of course. Then it will be reported, and then the equalization will commence and continue for two months.

Mr. WASHINGTON. In going backwards now and doing the office work, do the three assessors, yourself, Mr. Moore, and Mr. Cook, take up each lot in a square there in the office and together agree on its assessed value, or do you each put down your own figures?

A. No, sir.

Mr. WASHINGTON. How do you come at that?

A. I do the preliminary work of it on the atlas, perhaps, as much as anyone. It is really a work of equalization now.

Mr. WASHINGTON. Between you three in the office?

A. Yes, sir; of equalization and of agreement. Supposing that in going

down one line of squares we have reached conclusions, when we come down another we bear it in mind that we have reached those conclusions as to the other squares, and it would be obviously improper if we varied much between opposite sides of a street and corners that have equal advantages, and in that way we do justice fairly and equitably in the proposed assessments as far as we have gone.

Mr. WASHINGTON. And you three are working in the office as one man?

A. Yes, sir; as one man. Of course there are different prices. Now, when I have done this preliminary work on the atlas I report to the rest and we go at it and examine the books and all that, and reach a result, either unanimously or by a majority. If two of us agree, down goes that figure, and if one chooses to protest, he can.

Mr. WASHINGTON. He makes a minute of his protest on his book?

A. Yes, sir.

Mr. WASHINGTON. And that would go then to the board of equalization?

A. No, not necessarily; but the protests will doubtless be so used and will draw the attention of the then board of equalization to the fact that there is a protest against something. The protestant could give the reasons, and he would present the case right there, and it would be passed upon by the board of equalization. Of course, you understand that the assessor of the district comes in as a member of the board of equalization with us. Now, I do not know whether I have made myself plain in regard to the matter.

By the CHAIRMAN:

Q. Under your oath you are to ascertain the true value?—A. Yes, sir.

Q. In money; is that the language of the law?—A. I am not sure whether it is or not, but that is my construction of it.

Q. True value in money?—A. Yes, sir.

Q. And to assess the property at that?—A. At that.

Q. You say you do assess it in point of fact at 70 per cent of that?—A. No, sir.

Q. Well, what is it?—A. I say as far I am concerned while I can not say definitely that I do it by any special figure, yet I think that would be probably the manner. That is to say, about 70 per centum of its commercial value. In other words, that I put upon property as an intrinsic value that valuation which I think anyone would be justified to loan money on.

Q. And you think that is about what per cent of the sale under favorable circumstances?—A. Well, I should suppose that will vary. It will depend upon the kind of favorable circumstances.

Q. You have just now said it depended on the kind of unfavorable circumstances; now, under ordinarily favorable circumstances, what per cent is the assessment on the average?—A. I think about 25 per cent off.

Q. You mean 25 per cent less?—A. Yes, sir.

Q. Then the assessed value as you make it would be 75 per cent?—A. Seventy or 75 per cent.

Q. Of its true value under ordinarily favorable circumstances?—A. Of its market value.

Q. Now, how far have you gotten backwards from the highest numbered lot; what numbered lot have you gotten to in your work?

The WITNESS. In review?

The CHAIRMAN. The work you are doing in the office?

A. We have come down to the line of Tenth street.

Q. You do not remember the number of the lot?—A. If you have a map I perhaps could tell; I think it is four hundred and something.

Q. You think you have gotten back as far as four hundred and something?—A. Yes, sir.

Q. About Tenth street?—A. Yes, sir; I think between Ninth and Tenth; I am not sure.

Q. In this equalization that you describe as going on in the office now—a sort of equalization you call it—who is usually the low man?—A. Mr. Moore.

Q. And how are you generally—high?—A. I am the highest.

Q. That leaves Mr. Cook the intermediate position?—A. A very safe position.

Q. How much real estate have you in the District of Columbia?—A. Well, I do not know; I suppose I have 60,000 or 70,000 feet.

Q. In dollars how much would that be?—A. I do not know.

Q. We only want an estimate?—A. Yes; but I can not tell.

Q. Is it more than \$50,000?—A. The most of what I own is away out in a region where it is not likely to be improved in fifteen years; no sewer, no water, no gas, no anything; out in the eastern part of the city, east of Lincoln Park.

The CHAIRMAN. We only want about the value.

A. I could not tell.

Q. More than \$50,000?—A. I suppose about \$20,000.

Q. You are figuring now on commercial value?—A. I can not figure at all, because there is no sale for it.

Q. Where is it situated?—A. Out in the wilds, as we say.

Q. Just where?—A. Square 1064.

Q. Can you name others, or is that the only one you think of?—A. I own some lots in 1076, another square. I have no earthly objection to giving you a list of my little properties.

The CHAIRMAN. I thought you would have it in mind.

The WITNESS. I think the lots are 7, 10, and 11, original lots in square 1076.

Q. Is that all the real estate you own?—A. Oh, no.

Q. Well, if you do not object, we would like to learn about the rest?

The WITNESS. Certainly; I have not the slightest objection to giving you my tax list. I own the house that I am living in, near the Library here; I own a little house on Eleventh street—I do not remember the square—Eleventh, between B and C streets; and on 8th street SE. I own a couple of little houses there. I do not remember how many feet there are in the different portions.

Q. What do you think of the board of equalization under the new law?

The WITNESS. In what respect, sir?

The CHAIRMAN. Do you believe it is made up in a proper way to revise your work?

A. Well, I hardly think it is, because you see it brings in one man, and that upsets the idea of majorities. The board of equalization will, under the present law, consist of four persons. I do not know, of course, until the board of equalization meets and discusses that very question, that may have to be referred to the attorney for the District; also to see what would constitute a majority; I presume three men.

Q. That is, the assessment would stand unless three of the four desired to correct it?—A. It might.

Q. A tie vote would not upset the assessment?—A. I should think not.

Mr. WASHINGTON. Would not a tie vote let it stand as reported by the assessors?

A. Unquestionably.

Mr. WASHINGTON. And the same two men, if they held to their position——

The WITNESS (interrupting). Would dominate the situation. I judge others by myself entirely, but I presume the members of this board are fair men and broad men, and that they have no such opinions as would not be capable of being upset by further information.

Q. You do not favor the present plan of equalization, you think it is a mistake; the plan of the board of equalization, you think it is badly arranged?—A. No, I won't say that, because I want to see when we meet and think over the matter thoroughly and reach a conclusion as to it and get legal advice on the subject. I would not like to express an opinion on that. I do not expect that any wrong will be done either to citizens or to the Government.

Q. Do you estimate at all personal property in making your estimate of assessments, furniture, goods, and things of that kind?—A. No, sir.

Q. Does the law require you to?—A. No, sir.

Q. You are quite sure that the law says you shall only assess real estate?—A. No, I am too old to be sure of anything, sir.

Q. You say you have read the law?—A. Yes, sir.

Q. And you do not understand by that law that you are required to assess personal property at all?—A. No, sir; it is an assessment of the realty.

Q. Does that duty devolve upon you at a later date?—A. I do not know; we have not reached that stream yet.

Q. Why do you keep the proceedings of that board secret; is it because of some instructions or some law that you can point out?—A. Well, we do it upon a rule—so far as we do it at all—we do it upon a rule of public expediency, by which I mean that, as we have not reached any settled results, and will not until the 1st of June in my judgment, if any information went out touching our preliminary figures on certain property or properties, it would be very likely that there would be a great deal of objection by property holders in regard to what they supposed was going to be the assessment; and the assessment would thus be hindered. There would be possibly a great deal of pressure brought to bear upon us, and as the law provides a period of time during which that pressure should properly come upon us, namely, from the 1st of June to the 1st of August, when we equalize, and when appeals are made, and as we have so little time in which to make this preliminary assessment, that is why it is we do not give out our preliminary figures. We have to be careful about that.

Q. You can not point to any law though that either authorizes you or requires you to keep it secret?—A. No, sir; it is a conception of duty under the law.

Q. You expect this pressure that you speak of to be in the line of reduction?—A. Yes, sir.

Q. You have no impression that it would be a pressure to make it higher?—A. No, sir; there hardly would be a pressure to increase.

Mr. WASHINGTON. By men asking that the assessment on the property be raised?

A. That is very rare. One or two parties have told me that the last assessment was too low on their property. I think the general feeling of the community, however, is that they expect the inevitable; that there will be an increased assessment, and their special point—and it

is a proper point, and it is one that weighs on us all the time—is that there must be equality.

Mr. WASHINGTON. A gentleman showed me the other day from the assessment books of three years ago his own house and lot; he said, "There is my lot assessed at so and so," about little over half what he had paid for it, "and there is my house assessed at \$20,000;" he said, "I put into that house over \$69,000." He said he did not know why it was assessed that way. He said, "Here is another house that belongs to a widow just so many doors from me and her house is assessed at \$25,000, perhaps it cost that to build it, and her lot was taxed lower than his; that is an inequality, but I do not know why it is. In other words, there is a house and lot taxed for about \$30,000 which exclusive of the difference in the ground was very nearly its full value. Another gentleman, less than half a square away whose house alone cost him \$69,000 and his lot about \$9,000, was assessed for about \$27,000.

The CHAIRMAN. Then all the pressure that you describe as coming on you is in the direction of keeping it down?

Mr. WASHINGTON (interrupting). Excuse me. That was not by your assessment, that was the old assessment. I do not cite that now as being part of your work. I was referring to the old assessment.

The CHAIRMAN. This pressure that you speak of that you do not want brought on you before the 1st of June, and would be brought after the first Monday in June, during the time of the equalization, is in the direction of forcing assessments down, is it?

The WITNESS. It is merely a presumption on my part. I do not know that I have a right to presume anything of the kind, but still I do presume it; and our reticence as to present figures will be in the interest of having the assessments completed, because we have not been allowed sufficient time. I think that any one of these triennial assessments would take the whole three years to do it with any accuracy; and even then I believe that it ought to be gone over in such a careful way, after it is once made, in the manner that we are doing it, by view, so as to leave no doubt of its justness. It ought to be gone over again and again for the purposes of equalization. Of course we want to get something like a standard—that is what we are aiming at—by which future assessments can be helped, not governed but helped. It is simply an inference on my part of human nature generally that there will be a pressure upon us; we have had no pressure yet, but I simply—

The CHAIRMAN. You used the word, that is the reason I used it. You said you wanted to avoid that pressure.

The WITNESS. Avoid what I conceived might be a pressure, and what would interrupt our duties that we have very little time to perform; just as I told you the other day, it would be protracted and our duties that much interfered with in the very limited time we have to complete the assessment. The fact of the matter is if the time would have permitted I should have thought the best time to investigate what we propose to do or what we have done would be when we had done something, about the 1st of June, and then there would have been a little more time. It is an undiscoverable quantity what the amount of objection to our assessments will be; as there may be thousands of appeals and there may be very few.

Mr. WASHINGTON. I do not think I heard you state it, but how far have you gotten in assessing?

A. We have not assessed anything yet.

Q. What do you consider you have been doing, then?—A. I consider it all in the nature of notes.

Q. How far have you gotten as regards the whole work in making your notes, then?—A. About Tenth street.

Q. Is that as much as one-half of the whole work?—A. Oh, yes.

Q. How much more than half of the whole work?—A. I should say two-thirds.

Q. Two-thirds all together?—A. Yes, sir; more than two-thirds generally, because we have done the preliminary view-work, and now we are doing review work in the office. I hold that we have not made an assessment until we make the report of the assessment on the 1st of June, and I mentioned that to confine the question, if I could, to an exact understanding of the matter.

Mr. WASHINGTON. Whatever may be the nature of that work which you have in a measure completed, I want to get at the point. As compared to the whole that you have to do, what has been accomplished?

A. I should say about two-thirds of the review work, and we have done all of the preliminary view-work, that is, for Washington and Georgetown.

Q. I am taking them both together. How much of the time did you spend in the actual view of the work?—A. We commenced in July and we were viewing until the middle of January.

Q. (By Mr. WASHINGTON.) Then when did you begin the office work, making notes?—A. As soon as we got through with Washington city view-work we took Georgetown and did some office work intermediately, so that it would take half a day for office work and half a day for Georgetown view-work.

Q. You have completed some of the Georgetown review work, have you?—A. No, we went on the review of the Washington matter in the office; we would take half a day and go out in our wagonette, which was fitted up like a regular work-shop, a table and so on, so that we could work right on the ground with facility; we have some heavy books to carry along.

Q. Suppose an accident should occur by which one of you gentlemen, either by death or resignation, had to stop the work; could this assessment be completed, as you say, on the 1st of June? Would it not require at least two of you to make that report?—A. It would require a majority of the board—the report of the board—which, as I consider it, is one person; the board is the assessor for the purposes of this assessment.

Q. A man could be elected to fill his place and it would go on?—A. I think so.

Q. I want to know if there is time enough, proceeding at the rate you have been going, between now and the last day of May to finish this office work?

The WITNESS. I hope so; I do not know; we are going as fast as we can; I think it will be “nip and tuck.” The whole thing, so far as concerns the legislation creating this assessment board, was done so rapidly, and without that understanding of things that would come from deliberate legislation, that I think some mistakes have been made. We should have been provided with a fund out of which we could have been provided with a sufficient clerical force; it is only by the coöperation of the Commissioners that we have been able to have a clerk at all, and we should really have two or three clerks; there is a great deal to do to get the other “sources of information” outside of our own judgment; you see there have been very many sales, and these keep us constantly busy in making calculations by the foot. Then there is another

source of information. As we went around we saw placards on property, "For sale, apply to so and so." Now, we ought to have a clerk that we could send around to find out what those prices were. While the price that a piece of property is held at for sale is not strictly any criterion of its value, yet it gives some sort of information to us.

TESTIMONY OF JOHN F. COOK.

JOHN F. COOK, one of the assessors, being duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your residence and occupation?—A. My residence is 2222 Sixth street NW., Washington, D. C.; I am one of the assistant assessors for the District of Columbia; real estate dealing is my occupation generally.

Q. What do you understand your duties to be with regard to ascertaining the value of property?—A. Well, the law defines our duties measurably; it requires us to view the property and to estimate its value with a view to taxation.

Q. Do you know the language of the law?—A. I do not; only as to the viewing of the property.

Q. And ascertaining its true value in money, is not that the language?—A. By cash valuation, I think.

Q. You think it is cash valuation?—A. A fair cash valuation; fair valuation it is.

Q. That is your idea of the language of the law substantially?—A. Yes, sir.

Q. You can not turn to that law, can you?—A. It is in the last appropriation bill for the District of Columbia.

Q. That amendment applies to the appointment of this board, and it also has the terms in it you describe?—A. It is partially stated there, I think, and then it makes reference to the law that has obtained in previous assessments by reference.

Q. (By the CHAIRMAN.) That is my recollection.—A. The previous law defines more definitely the duties.

Q. Now under that law, what do you understand is meant by the true value or the cash value?—A. The true value I would take to be a value under a forced sale, where a person is obliged to sell his property, where it is put up at auction—not a piece of property when a person advertises it on the expectation of getting a high price, and not realizing that, taking it down and putting it up again. I think that is the idea.

Q. Your interpretation is where a person——A. (Interrupting.) Where a person under necessity puts up his property and takes what is offered—the market price.

Q. And that is what you intend to put as the assessed value?—A. Well, we make that the basis; I do in my estimate.

Q. Do you put that value or some part of that value as the assessed value?—A. I endeavor to put only that value.

Q. Now that value is under unfavorable conditions?—A. Under necessities conditions.

Q. What percentage would that be of the true value under favorable conditions?—A. Advantageous value is a favorable condition where; a person hopes to get a great deal for it—three or four times the value.

Q. What do you take, the most disadvantageous or the most favorable circumstances?—A. I should take the lower scale.

Q. What is the difference; what percentage does one bear to the other?—A. I suppose 20 or 25 or 33 per cent, perhaps.

Q. That is, you state it in this way; that 66 per cent or 67 per cent of the sale under favorable circumstances would be what it would be worth?—A. Under most unfavorable circumstances.

The CHAIRMAN. The most disadvantageous?

A. I would take the percentage as the value for assessment purposes, what it would bring under a disadvantage.

Q. And between those two you think one would be 60 or 66 per cent of the other?—A. About 66 or 75 per cent.

Q. I understand you myself, but I want to clear the record; therefore I am going to repeat—66 or 75 per cent of the value under favorable conditions would be about what it is worth under the unfavorable conditions you assess by?—A. That is it.

Q. On your board, who is the high man and who is the low man in your readjusting?—A. Well, after we have viewed a square of lots it is our custom for each man to put down his own figures, when we come to it, we take it from the books as they are; each preserves his own figures, and the books will show.

Q. There is no man that you would say is universally low?—A. I could not say that; I might think some business property higher than the others; when you take the squares all around and equalize the blocks, taking everything into consideration I would say we are very nearly equal.

Q. You do not think you are universally a high or low man?—A. I do not consider that I was either the high or the low man.

Q. What property do you own in the city?—A. Well, I have a piece at the corner of Fourteenth and H streets.

Q. What is the name of that?—A. It is now called the Stratford Hotel.

Q. If you do not object we would like to have you state the real estate, not the personal property, that you own.—A. My personal property is very quickly described.

Q. It is the real estate we are after.—A. Well, that is one piece, and I have some property on Sixteenth street above L—three lots there.

Q. Can you give the number of the block?—A. Square No. 183, I think it is; then I have a piece in square 68, Twenty-second and O streets; I have two lots on the Seventh-street road between Marshall and Farragut streets. I think that is about all. There are some other pieces that are in legal dispute.

Q. What is the value of that property?—A. Well, I should consider it worth about \$2 or \$3 a foot. I, with my brothers and sisters, heirs of my father, own a piece of property on K street near Sixteenth.

Q. What do you consider all that worth in a gross sum?—A. The values are not the same; that on the corner of Fourteenth and H streets, exclusive of the building—

The CHAIRMAN. I include the building; give it both ways.

A. Well, the building is worth about \$30,000; that is very nearly what it cost; I think the ground is worth \$20,000. The building is not paid for, and so it is not worth so much.

The CHAIRMAN. Take all the property together?

A. The other property on K street, I would not like to take less than \$4 for. I am one of the five or six owners of it.

Q. How much is it worth, the total?

The WITNESS. All my property?

Q. The last piece you spoke of on K street?—A. Well, there are about 6,600 feet of ground in it and I do not think we would take less than \$25,000 for it; we would like to get that for it.

Q. So far you have about \$75,000 altogether?—A. The property that I am interested in; I do not own that; I am only one of several.

Q. All of your real estate in the District is worth about how much?—A. Well, I suppose about \$60,000; I think the commercial value is as much as \$75,000. As a matter of course it is subject to discount.

Q. I want to get at whether you are talking of commercial or assessed value.—A. I am talking about commercial value; about \$75,000.

Q. What do you think of the plan of the board of equalization as it is proposed; you are to be a member of it; do you think it is a good means of correcting errors?—A. I have great confidence in it; I have taken the composition of it; they are reasonable men.

Q. The same men review their own work?—A. I know; I think they are capable of reviewing their work with the assessor.

Q. And do you think well of that board of equalization?—A. I think well of it. I have a good opinion of myself in that respect.

Q. You do not assess personal property at all, do you?—A. No, sir; not unless directed by the assessor when we are through.

Q. Do you know of any law that requires you to do it?—A. Only as we are subject to his direction, as I read the law.

Q. Why do you keep your methods secret?—A. Well, I think if persons knew what our rates were, others would come in and stop us in the prosecution of our work; that is all. I have never favored open meeting.

Q. Will they come in the interest of raising the assessment?—A. They would be asking us questions as to their property. I never heard of but one person who asked that, and that was playfully asked. A gentleman said he wanted to sell his property, and wanted us to put a high value on it.

Q. But generally they do not come to see you to get the value higher?—A. No, sir.

Q. Do you know of any law that requires or permits you to keep the work secret?—A. I do not; I think until we report it to the Commissioners it ought to be kept secret.

Q. But that is a matter of opinion and not of law?—A. That is it, sir.

Q. How far have you gotten in your work in the office?—A. We are now equalizing, subject to any change that we may agree upon.

Q. You have commenced on this office work at the high numbered squares and are going back?—A. From the East to the West.

Q. How far have you gotten, to what numbered square?—A. Between Ninth and Tenth streets, square No. 356, going westward.

Q. There was a resolution adopted, we understand, by your Board at the beginning of its session, making a rule of assessments, and you, as secretary, are custodian of the papers and have a copy of that?—A. I have; we asked for certain definitions of terms used and the Commissioner referred it, as we requested, to the attorney for the District, and he gave a definition of them.

Q. Will you send us a copy of that, please?—A. Yes, sir.

By Mr. WASHINGTON:

Q. Who assesses the personal property?—A. The individual assesses himself.

Q. To whom does he make his report?—A. To the assessor.

Q. Does he make the statement under oath?—A. Yes, sir; it is a sworn statement?

Q. Is he furnished a blank by the assessor?—A. Yes, sir.

Q. Which he fills out and to which he is supposed at least to swear?—

A. It is prepared in such form that he is compelled to swear; he can come there and the officer can take his oath or he can go before any person qualified to administer oaths.

Q. Does personal property include stocks, goods, and all those things?—A. Yes, sir; choses in action and all that.

Q. Do you think they get at the true value of personal property here in the District for taxation?—A. Well, it is subject to a great many doubts whether they get at the true value. I dare say there are a great many conscientious people.

The CHAIRMAN. It is only the citizens who are conscientious that pay that, is it?

A. Well, in two years we have collected every cent.

Q. (By the CHAIRMAN.) I mean who reported it?—A. Yes, sir; that is true; merchants and others generally make fair, average returns, but things we do not see we do not know.

Q. Is there a privileged tax here as they have in many cities among merchants?—A. No, sir; that has been done away with, and it is all \$15 on a thousand for personal property in business.

Q. They do not require a merchant, then, or a man who keeps a livery stable to take out a license for the privilege?—A. No, sir; there are some classes of business that are taxed that way. Now a livery stable proprietor, for instance, pays a personal tax and a license tax.

The CHAIRMAN. Do you know how much was turned in on personal property under the last assessment?

A. I do not, sir.

The CHAIRMAN. You have assessed some of the squares on F street, outside of Ninth or Tenth streets, have you not?

A. We have on F and G streets. We are following down the line from the northern limits of the city to the river.

Q. Have you completed the assessment on square 377, which is on the corner of Ninth and F streets?—A. We have passed that square.

Q. You could furnish us a copy of that assessment?—A. I guess I would have to be governed by the board in that. I have no objection myself.

Q. Then I request you to send us that with the other papers if you can. Not too fully, I do not care about that; you can give it as you think proper.

The WITNESS. We can make a transcript from the field books.

The CHAIRMAN. We do not care about each man's opinion. All we want is what you have agreed upon to date subject, of course, to change.

Mr. WASHINGTON. We want each lot.

The WITNESS. That is all the field books give.

The CHAIRMAN. Just as it is kept in the book.

The WITNESS. You do not want the names, just the parts.

The CHAIRMAN. That is all.

The WITNESS. We do not deal with names.

Whereupon the committee adjourned until to-morrow, April 19, at 11:30 a. m.

WASHINGTON, D. C., *April 19, 1892.*

The committee met pursuant to adjournment, but without transacting any business, adjourned until to-morrow, April 20, 1892, at 11:30 a. m.

WASHINGTON, D. C., *April 20, 1892.*

The committee met pursuant to adjournment, but without transacting any business, adjourned until to-morrow, April 21, at 11:30 a. m.

WASHINGTON, D. C., *April 22, 1892.*

The special committee to investigate tax assessments in the District of Columbia met pursuant to notice, and was called to order by the chairman.

The clerk called the roll, and there were present Messrs. Johnson (chairman), Washington, and Wadsworth.

TESTIMONY OF SIDNEY T. THOMAS.

SIDNEY T. THOMAS, the assistant attorney of the District of Columbia, having been subpoenaed by the committee, and duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your official position?—A. I am assistant attorney for the District of Columbia.

Q. How long have you been in that position?—A. For more than two years.

Q. Was your advice asked by the assessors at the time of the organization of the new board of three permanent assessors?—A. My advice was asked by the Commissioners of the District as to the status of those assistant assessors and their relations to the assessor, and also, I think, as to the meaning of certain expressions in the tax law of 1883.

Q. Will you tell us what advice you gave?

Mr. WASHINGTON. Did they submit their request in writing or was it a verbal request?

A. In writing.

Mr. WASHINGTON. Could you furnish a copy of that request?

A. I haven't it, sir; it was returned to the Commissioners. The assessors asked the Commissioners to refer to the attorney the question as to how they stood, and they referred it and I gave them a written opinion, I think, about the 6th of July, 1891.

The CHAIRMAN. Can you give us a copy of that opinion?

A. I could, but the Commissioners have the original and will produce it, I take it, on request of the committee.

Q. What advice did you give as to the interpretation—I believe you were asked as to the interpretation of the words “value” and “true value?”

The WITNESS. Yes.

The CHAIRMAN. These expressions they asked to have interpreted?

A. I think I said to them that I thought the expression “true value”

as used in the act of 1883 meant ordinary market value and not a fictitious or speculative value.

The CHAIRMAN. Under what circumstances?

A. I do not know that I stated under what circumstances.

The CHAIRMAN. You did not say under forced sale?

Mr. WASHINGTON. Under adverse circumstances?

The CHAIRMAN. At forced sale under adverse circumstances, you did not advise them that way?

A. No, sir.

The CHAIRMAN. You are familiar with the statutes under which the assessors are working?

A. Well, fairly so, I think.

Q. Could you refer easily to that law?—A. Oh, yes; it will be found in Richardson's Supplement to the Revised Statutes, the second edition.

Q. Was the district attorney consulted by you at the time you gave that advice?—A. I do not remember whether he was or not; I do not remember whether he was in the city at the time or not.

Q. And the result of your advice was embodied in a written report to the Commissioners?—A. Yes, sir; I think under date the 6th of July, 1891.

By instruction of the chairman the clerk here read from the testimony of Mr. Dawson, as follows:

The plan we laid out to follow was that of commencing at square No. 1 and going to the end of the numbers in Washington, and then taking Georgetown afterwards; we proceeded numerically, 1, 2, 3, 4, etc. Each of us had our books and we went in a wagon. The opinion of the attorney for the District was that the board as a board must go out and view every piece of property. I quite coincided in that view as to what the law prescribed. I will say this too, and it is quite important in this connection, that the very first thing we did after receiving that report from the assistant attorney for the District, Mr. Thomas (I presume it was concurred in by the attorney for the District himself, Mr. Hazelton, though it was signed by Mr. Thomas), was to adopt a rule of action. I suggested to the board that it would be a very proper thing as we were starting to determine a rule to guide us in our estimate of values. There were two laws which governed us, which are familiar to you, I have no doubt. The terms "value," "true value" and "valuation," occurred in them quite frequently, and I had personally asked the attorney for the District in making this report on our functions, to also state what, if any difference existed in the legal interpretation of those terms, whether he considered value and true value meant one and the same thing. He went a little farther than that and suggested something that I had not asked him at all, and that was a rule of valuation which he laid down. I held and still hold—and I think he and his superior, the attorney for the District, coincide in that view now; they so expressed themselves to me—that the board is the only power to pass upon that question. We adopted a rule under those circumstances. I presented to the board my idea in regard to the rule we should work upon, that of basic value, and we passed a resolution that I presented to them, that wherever the terms value, true value or valuation occur in the law that we should construe it to mean real value, intrinsic value; and that the measure of that intrinsic value is the amount that the property would bring at forced sale under adverse circumstances. That rule was adopted unanimously, and the community seemed to acquiesce in it, judging by the interviews that were published in the Star at the time, with leading people here, leading citizens.

Mr. Thomas, having been handed the Supplement to the Revised Statutes referred to, then answered as follows:

As I understand it, the assistant assessors are working under the act of March 3, 1883, to be found in the twenty-second volume of the Revised Statutes at page 568.

The CHAIRMAN. And what section do you refer to?

The WITNESS. The three assessors, called "assistant assessors," were appointed, as you know, under the act of 1891, and they took the place of the twelve assessors provided for in the act of 1883, and they do what those assessors were required to do. Under section 6 of the act of 1883 the twelve assessors were required, from actual view and from the best sources of information within their reach, to determine, as near as practicable, the true value of each separate tract of parcel of land they were to assess in the District of Columbia.

Mr. WASHINGTON. And after specifying the squares, subdivisions, etc., it says in lawful money, does it not?

The WITNESS. Yes, sir; in lawful money.

Mr. WASHINGTON. So that if you leave out the little break that is interpolated, as described, the language would be the "true value in lawful money."

The CHAIRMAN. What do you interpret that to mean?

A. Well, as I understand it, the expressions "true value," "intrinsic value," "cash value," and "market value," found in tax acts, mean substantially the same thing. I should say they meant the value a piece of property would bring under ordinary circumstances; what it would bring if somebody wanted to buy, but who did not want it particularly, and some one wanted to sell it who was not obliged to sell it.

Mr. WASHINGTON. You would not interpret true value to mean a forced sale, where a party is forced to sell and buyers were very scarce?

A. No; I think that would not be a judicial interpretation of the phrase "true value."

Mr. WADSWORTH. You think what it would bring at auction, not at a forced or foreclosure sale?

A. I mean a fair sale; such a sale as a court of chancery would ordinarily approve as a fair one.

The CHAIRMAN. Would it be such a price as is contemplated by the condemnation law where a man's property is taken and before he can be dispossessed of it he must receive its true value in money; would it be subject to the same interpretation as that?

A. No, hardly. I think that a man whose property is taken in the exercise of eminent domain is entitled probably to a little more.

The CHAIRMAN. More than the cash value?

A. Well, yes; a little more than the ordinary value. His property would be taken against his consent.

Mr. WADSWORTH. Would you take into consideration what the property rents for?

A. I want the gentlemen of the committee to understand that I am not an expert in real-estate matters; in relation to my own property I would consider the rents as an element in determining its value.

Mr. WADSWORTH. You would not consider that, of course, in the case of a vacant lot?

A. No, sir.

Mr. WASHINGTON. In the case of a vacant lot you would have to consider what was the ordinary market value to get what is the true value, the market value being understood to be what it would sell for under ordinary circumstances?

The CHAIRMAN. You will notice from what has been read from Mr. Dawson's testimony that he quotes you, and he thinks the district attorney as well, as fixing the rule which they afterwards adopted.

The WITNESS. Well, I do not remember any such thing; I think probably Mr. Dawson is mistaken; all that was said on the subject was contained in an opinion addressed to the Commissioners.

The CHAIRMAN. I will read you the rule they adopted:

Resolved, That in making the assessment of real property in the District of Columbia for the triennial period beginning with the fiscal year 1893, the term "value" and "true value" used in the existing law governing it, shall be regarded as meaning one and the same thing, to wit, true or intrinsic value, and that the measure of such true or intrinsic value is that amount in lawful money which such property would probably bring at a forced sale under adverse circumstances.

Now my question is, is that substantially the advice you gave in your letter to the Commissioners?

A. No, sir. I said to the Commissioners that those expressions "value" and "true value" meant fair value, not a fictitious or speculative value.

The CHAIRMAN. Does the same language "value" and "true value" that you have just read to the committee from the statute apply to personal property?

A. I do not know whether it does or not; I think personal property is assessed under the act of 1877. (After referring to the statute.) I do not believe that the act of 1883 applied to personal property.

The CHAIRMAN. What act does apply to personal property?

A. The act of 1877; 19, Statutes at Large, page 395.

The CHAIRMAN. Then, wherever cash value occurs in the section you have read it means the same as true value?

A. Well, I would say it meant substantially the same; there is a little variation; a cash value might not be the same as a value with deferred payments, as we say, on credit.

The CHAIRMAN. Then to make it cash value you would have to compute the interest to date, or discount to date?

A. Yes, sir.

The CHAIRMAN. Then it would bring it to the cash value?

A. Yes, sir.

The CHAIRMAN. Under the personal property tax law are taxpayers required to return either stocks or goods?

A. I think they are, so far as the goods are not exempt from execution.

The CHAIRMAN. And that cash value or true value would mean the same as the statute of 1883 that we have been talking about?

A. Well, perhaps so; a man's stock of goods might be worth in cash what he gave for them, or they might be worth more or less. I am not prepared to say whether the same expressions in the statute would hold as to personal property, or would be the same as to both classes of property.

Q. (By the chairman.) It would not be right to find the cash value and deduct 30 per cent from that?—A. No, sir; that is not what the law says.

Q. Then if he turns in \$2,000 in money it would not be right to deduct 30 per cent from that to ascertain the true value, would it?—A. No, sir; unless there was some question of distinction between silver coin and bullion.

Q. The language is "lawful money," and therefore excludes that,—A. Yes; the language is "lawful money."

Q. So it is not right, in your judgment, in following that law to make a deduction of 30 per cent to arrive at the true value?—A. Now, I hardly know how to answer that.

Q. I am only asking your opinion as a lawyer. There are no words in the law authorizing a deduction of 30 per cent from the value, as contemplated by the statute, to arrive at the true value?—A. There are not, if the statute is to be literally followed.

Q. (By Mr. WASHINGTON.) You do not think that the statute now in existence for the purpose of taxation means that you shall ascertain the true value of real estate or personal property, and then deduct an arbitrary sum like 30 or 40 per cent?—A. No; the statute in regard to personal property provides that there shall be a return of the cash value, and then the taxpayer is allowed to take from that the debts he owes, and the balance is the basis for taxation, as I understand it.

Q. And from that balance the assessor would not have the right to arbitrarily deduct 30 or 40 per cent, or any fixed per cent that he might in his own mind think proper to work at, as a rule?—A. I do not think he would.

Mr. WADSWORTH. Certainly not under the statute?

The WITNESS. That is not the language of the statute.

Q. Under the statute the assistant assessors would not have the right, if they saw fit, in carrying out the law, to ascertain the true value in lawful money of the real estate in the District, and then run an arbitrary rule through that to take off 30 or 40 per cent, would they?—A. Well, I am not very well acquainted with this mode of interpreting tax acts adopted by assessors; I do not know about that. I can only give you what I should say would be, or ought to be, a judicial determination of the matter.

Q. We want your opinion as an attorney in the matter?—A. What taxing officers would do in practice in interpreting tax acts I could not tell.

Q. Do you know of any decisions that have been rendered by any District court, or by the Supreme Court of the United States on appeal, upon this question as to what is the true value of property for the purpose of assessment here in the District; has there been any construction of the assessment laws?—A. None in this District. There is one in the chairman's own State, I believe.

Mr. WASHINGTON. I mean in the District of Columbia.

The CHAIRMAN. Give me the citation in my own State, please.

The WITNESS. It is the case of Cummings against National Bank, 101 U. S., I think; it came from your State.

Mr. Thomas is here excused.

TESTIMONY OF GEORGE A ARMES.

GEORGE A. ARMES, being duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. Licensed real-estate broker.

Q. You are familiar with the value of property on F street between Ninth and Fifteenth streets, are you not?—A. Well, familiar to a certain extent all along.

Q. About the blocks on each side of F street between Ninth and Fifteenth streets?—A. Yes, sir,

Q. Will you please give the committee your estimate of the true value, in lawful money, of the ground, exclusive of the improvements, in square 253?—A. My estimate is as follows:

All of lot—	Per square foot.	All of lot—	Per square foot.
1.....	\$40.00	14.....	\$35.00
2.....	30.00	15.....	16.00
3.....	25.00	27.....	18.00
4.....	25.00	16.....	15.00
5.....	25.00	17.....	15.00
6.....	25.00	18.....	16.00
7.....	25.00	19.....	16.00
8.....	30.00	20.....	15.00
9.....	40.00	21.....	15.50
28.....	45.00	22.....	18.00
29.....	65.00	23.....	30.00
11.....	40.00	24.....	16.00
12.....	20.00	25.....	15.00
Long part of lot 13.....	30.00	26.....	20.00
Balance of lot 13.....	30.00		

The CHAIRMAN. Do you think you could buy that property at those prices?

A. I think I could sell it at those prices.

Q. Do you think you could buy it at those prices?—A. No, sir; I do not think I could; I think they would object to those prices. If I asked them to let me have it to sell, they would decline.

At this point recess was taken until 2 o'clock.

AFTER RECESS.

TESTIMONY OF M. I. WELLER.

M. I. WELLER, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. Real-estate broker.

Q. You are familiar with the value of property in East Washington, are you not?—A. I am, sir.

Q. Will you please give the committee your estimate of the true value, in lawful money, of the ground, exclusive of the improvements, in square 1003?—A. I will, sir. I will give the values as I understand them, as they would obtain at auction sale.

Mr. WASHINGTON. And the terms.

The WITNESS. One-third cash, balance in one and two years, property advertised, with a fair attendance. In my judgment, the property referred to (square 1003) would realize the following figures:

Lots 17 to 41, 85 cents; lots 42 to 67, 40 cents; lots 68 to 93, 45 cents; lots 94 to 119, 55 cents per square foot.

Q. Are you in the habit of attending auction sales, and are you a buyer of such property?—A. I attend nearly all public sales in East Washington and buy very frequently.

Q. Please describe the square of which you have been speaking (1003).—A. It is improved by houses averaging six rooms and bath, brick; a row of brick houses, no frames on the square; mostly small homes.

Q. You say that those prices are what they would bring at auction?

What would they bring at private sale under ordinary circumstances?—

A. From 15 to 20 per cent more.

Q. Are you familiar with square 675?—A. Yes, sir.

Q. Describe it as to homes and character?—A. The square is nearly entirely improved with a class of small houses that rent all the way from \$15 to \$30 per month rent.

Q. Will you please value this ground as you did the preceding square?—A. Yes, sir; all my answers will be based on the same contingency, public sale or auction sale, which is about 15 per cent lower than private sale under ordinary circumstances. From lot 89 to 115, 75 cents per square foot; from 264 to 274, 85 cents per square foot; from 261 to 263, \$1.25 per square foot; from 132 to 134, \$1 per square foot; from 135 to 180, 60 cents per square foot; from 181 to 221, 60 cents per square foot; lot on the northwest corner of square, \$1.15; 223 to 260, 90 cents per square foot.

Q. You are familiar with square 674, are you not?—A. I am, sir.

Q. Please describe it as to homes, character, etc.—A. The majority of the houses in square 674 are small homes.

Q. Please value those lots in the same manner.—A. The lots fronting on K street from First street east to the 10-foot alleyway near North Capitol street, 90 cents per square foot; lots 38 to 42, fronting on North Capitol street, \$1 per square foot; lots fronting on Fenton Place, north and south side, from the alley to First street east, 50 cents per square foot, including the lots fronting on First street; balance of lots fronting on North Capitol street from Fenton Place to L street, 90 cents per square foot. This includes the average lot 100 feet deep to the alley. The balance of the square fronting on L street, 60 cents per square foot.

Q. Are you familiar with square 721?—A. Yes, sir.

Q. Please describe it as to homes and character.—A. They are a medium class of small homes.

Q. Will you please value this ground as you did the preceding square?—A. Yes, sir. The whole F-street front averages 75 cents per square foot; the south and north sides of California street, 50 cents per square foot; the E-street front, 65 cents per square foot.

Q. Are you familiar with square 934?—A. I am, sir.

Q. Please describe it as to homes and character.—A. It is improved mainly by small homes, the majority being frame houses.

Q. Will you please value this ground as you did the preceding squares?—A. The H-street front, \$1; that is the average value of the lots; the G-street front, 70 cents per square foot; the Ninth-street front is worth 90 cents per square foot, and the Tenth-street front, 70 cents per square foot.

Q. Are you familiar with square 903?—A. I am.

Q. Please describe it as to homes and character.—A. It is improved mainly by frame houses, small homes.

Q. Please value this ground as you did the preceding squares.—A. The Seventh-street front, average value, 60 cents per square foot; E and G streets, 60 cents per square foot; Eighth street, 80 cents per square foot.

Q. Are you familiar with square 924?—A. Yes, sir.

Q. Please describe that as to homes and character.—A. This is improved mainly by brick houses with modern improvements; small homes.

Q. Will you please value this ground as you did the preceding squares.—A. The D-street front, \$1.25 per square foot; the Eighth-

street front, 80 cents per square foot; C-street front, 90 cents per square foot; Ninth-street front, 85 cents per square foot.

Q. Are you familiar with square 846?—A. Yes, sir.

Q. Please describe that as to homes and character.—A. It is improved by small homes, mainly frames.

Q. Will you please value this ground as you did the preceding squares?—A. The Sixth-street front, 75 cents per square foot; the E-street front, 65 cents per square foot; the G-street front, 70 cents per square foot; the Fifth-street front, 60 cents per square foot. I would like to add that I give the average value of an entire frontage. The corners alone are worth more money. On the average you should add 33½ per cent to get the additional value of the corner.

At this point Mr. Weller was excused and the committee adjourned until to-morrow, Saturday, April 23, at 11:45 a. m.

WASHINGTON, D. C., *Saturday, April 23, 1892.*

The committee met pursuant to adjournment, and was called to order by the chairman.

The clerk called the roll, and there were present Messrs. Johnson (the chairman) and Washington; absent, Mr. Wadsworth.

TESTIMONY OF WILLIAM P. YOUNG.

WILLIAM P. YOUNG, being duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. Real estate and insurance.

Q. Are you familiar with the value of property on F street between Eleventh and Fourteenth streets northwest?—A. Well, to some extent.

Q. Will you please give the committee your estimate of the true value in lawful money of the ground, exclusive of the improvements, in square No. 320?—A. To the best of my knowledge and belief it is as follows: Lot 1, \$50 per square foot; lots 2 and 3, \$25 per square foot; lot 4, \$40 per square foot. Those lots comprise the F street front.

Q. Are you familiar with the value of the ground in all of square 253?—A. Yes, sir.

Q. Please give the committee your estimate as before.—A. Lot 1, \$50; lot 2, \$40 per square foot; lots 3 to 8, \$25 per square foot; lots 9, 10, and 11, \$60 per square foot; lots 12 and 13, \$15 per square foot; lot 14, \$25 square foot; lots 15 to 22, \$12 per square foot; lot 23, \$20 per square foot; lots 24, 25, and 26, \$15 per square foot.

Q. Please give the value, similarly, of the ground in squares 321, 289, 290, and 254.—A. Square 321, lot 12 (corner lot), \$40 per square foot; lot 11, \$25 per square foot; lots F and G, \$30 per square foot; of 9, \$40. Square 289, lot 1, \$45 per square foot; lot 2, \$30 per square foot; lots 3 and 4, \$20 per square foot; lot 5, \$20 per square foot; lot 6, \$30 per square foot; of 7 and 30, \$45 per square foot. Square 290, lot 16, \$40 per square foot; lot 15, \$25 per square foot; lots 13 and 14, \$18 per square foot; lot 12, \$25 per square foot; lot 11, \$40 per square foot. Square 254, lot 23, \$40; lot 22, \$25; lots 21 to 16, \$18; lots 13, 14, and 15, \$50 per square foot. All of my estimates refer to square feet.

Mr. Young was here excused.

TESTIMONY OF W. RILEY DEEBLE.

W. RILEY DEEBLE, being duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I am a real estate broker.

Q. Are you familiar with the value of property in the District of Columbia, known as squares 253 and 224?—A. Yes, sir; I think so.

Q. Will you please give the committee your estimate of the true value in lawful money of the ground, exclusive of the improvements, in those squares?—A. Yes, sir; square 253, original lot 1, \$50 per square foot; lot 2, \$40 per square foot; lots 3 to 8, \$25 per square foot; lots 9, 10, and 11, \$75 per square foot; lots 12 and 13, \$18 per square foot; lot 14, \$27 per square foot; lots 15 to 22, \$12 per square foot; lots 23 to 26, \$15 per square foot. Square 224, lot 1, \$65 per square foot; lot 2, \$30 per square foot; lots 3 and 4, \$25 per square foot; lot 5, \$37.50 per square foot; lot 6, \$75 per square foot; lots 7 and 8, \$40 per square foot; lot 9, \$75 per square foot; lot 10, \$30 per square foot; lot 11, \$25 per square foot; lot 12, \$25 per square foot; lot 13, \$25 per square foot; lot 14, \$35 per square foot; lots 15 and 16, \$19 per square foot.

Q. Those figures you consider the market price under ordinary circumstances?—A. That is it, sir; not the auction sale.

Q. Do you know of any sales of property on F street, between Eleventh and Twelfth streets, lately?—A. I know of the sale of sub F to Mr. Metzgerott within the past two weeks for \$60,000, which is about \$35 per square foot.

Mr. Deeble was here excused, and the committee thereupon adjourned until Monday, April 25, 1892, at 11:45 a. m.

WASHINGTON, D. C., *April 25, 1892.*

The committee met pursuant to adjournment.

The clerk called the roll, and there were present the chairman and Mr. Washington. Absent, Mr. Wadsworth.

TESTIMONY OF J. S. SWORMSTEDT.

J. S. SWORMSTEDT, being duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. Please state your occupation?—A. I am a real estate broker.

Q. Are you familiar with the value of property in the District of Columbia, known as squares 377, 376, 347, 346?—A. I am.

Q. Will you please give the committee your estimate of the true value in lawful money of the ground, exclusive of improvements, in those squares?—A. Yes, sir. It is as follows: Square No. 377, lots 1, 2, and 24 (Ninth and E streets), \$20 per square foot; lots 22 and 23, \$15 per square foot; lots 19, 20, and 21, \$40; lots 15, 16, 17, and 18, \$25 per square foot; lots 12, 13, and 14 (Tenth and F streets), \$30 per square foot; lots 10 and 11, \$10 per square foot; lots 7, 8, and 9, \$10 per square foot; lots 3, 4, 5, and 6, \$6 per square foot. Square 376, lots 1, 2, and 22, \$40

per square foot; lots 3, 4, 5, and 6, \$25 per square foot; lots 7, 8, and 9, \$30 per square foot; lot 10, \$10 per square foot; lots 11, 12, and 13, \$20 per square foot; lots 14, 15, 16, and 17, \$10 per square foot; of 18, \$10 per square foot; A, B, C, D, E, and F, \$20 per square foot; of 21 and G, \$20 per square foot. Square 347, lots 1, 2, and of 3 and 16, \$15 per square foot; of 4, 17, and 3, \$15 per square foot; 5, 6, and 7, \$15 per square foot; 8, of 9 and A and 10, \$40 per square foot; 11, 12, and 13, \$35 per square foot; 14 and 15, \$12 per square foot. Square 346, lot 11, \$15 per square foot; lots 7, 8, 9, and 10, \$20 per square foot; lots 5 and 6, \$15 per square foot; A, B, C, 2, and 12, \$35 per square foot; 3 and 4, \$40 per square foot.

Q. What lot was it that was sold at \$35 a square foot a short time ago?—A. It was lot F, in square 321.

Q. You have put your prices lower than that; will you please explain to the committee why?—A. I think that price was paid simply because it was worth that to the owner in conjunction with other prices in the the same square. He had made the other property of the same value as that, and it was done to bring this up to par.

Q. Then you think that was abnormally high?—A. Yes, sir.

Q. And the real value of that particular lot would be in your judgment about what?—A. About \$25.

Q. The values you have given here are not fancy prices at all, but what the property would be worth under ordinary circumstances?—A. What the property could be sold at, at private sale.

Q. Do you consider them if anything, low, or high, a little below or a little above what they would bring at private sale?—A. I have tried to make it neither; just what I think the property ought to bring.

Q. Do you think it would be easier to buy or sell at those prices?—A. I think it would be easier to sell them.

Mr. Swormstedt was here excused.

TESTIMONY OF ROBERT O. HOLTZMAN.

ROBERT O. HOLTZMAN, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I am a real estate broker.

Q. Are you familiar with the value of property in squares 347, 377, 376, and 346, in the city of Washington?—A. I am.

Q. Will you please give the committee your estimate of the true value in lawful money of the ground, exclusive of the improvements, in those squares?—A. I will. It is as follows: Square 347, lots 11, 12, and 13, \$25 per square foot; lots 8, 9, A, and 10, \$30 per square foot; lots 7 and 6, \$10 square foot; lots 5, of 4, 17, and of 3, \$15 per square foot; of 3, 2, 1, and 16, \$15 per square foot; 14 and 15, \$10 per square foot. Square 377, lots 19, 20, and 21, average \$28 per square foot; 15, 16, 17, and 18, \$20 per square foot; lots 12, 13, and 14, \$22 per square foot; lots 10 and 11, \$8 per square foot; 7, 8, and 9, \$10 per square foot; 3, 4, 5, and 6, \$5 per square foot. Square 376, lots 1, 2, and 22, \$30 per square foot; lots 3, 4, 5, and 6, \$20 per square foot; lots 7, 8, and 9, \$25 per square foot; lot 10, \$10 per square foot; 11, 12, and 13, \$15 per square foot; lots 14, 15, 16, and 17, and part of 18, \$10 per square foot; A, B, C, D, and E, \$18 per square foot; F, G, and 21, \$10 per square foot. Square 346, lots A, B, C, 2, and 12, \$26 per square foot; lots 3, 4, and 5, \$30 per

square foot; south half of 6 and 11, \$10 per square foot; north half of 6 and 11, \$10 per square foot; lots 7, 8, 9, and 10, if sold together, \$18 per square foot.

Q. Would you think it easier to buy or sell at the prices you have given?—A. I think it would be about a stand-off.

Q. Do you think you could buy most of the property at the figures you have put down?—A. I guess you could sell it easier than you could buy it.

Mr. WASHINGTON. You do not think it would be difficult to sell at those prices?

A. Some of the inside lots you might find difficult to sell.

Mr. WASHINGTON. Not those corners; favorably located lots?

A. No, sir; I have tried to strike an average of the whole of each square.

Q. Please tell us about the sale of that property on F street at \$35 per square foot.—A. In the first place, the Metzertts were obliged to have that adjoining lot on F street.

Mr. WASHINGTON. That is where that old gentleman named White had his store and was killed?

A. Next door, I think. It is in square 321; 25 feet by 70 deep sold for \$38 a square foot under adverse circumstances.

The CHAIRMAN. Adverse to the purchaser you mean?

A. You might say aggravated circumstances.

Mr. WASHINGTON. How much too high do you think that \$38 was over its normal value?

A. Eighteen dollars.

Mr. WASHINGTON. You think it was \$18 above its normal or reasonable value?

A. Yes, sir.

Q. Were they obliged to buy there in order to get that hall back in proper shape?—A. No, sir; to get a store of the proper size for their business; they are going to carry on a large piano business.

At this point the committee adjourned until to-morrow, April 26, at 11 o'clock.

WASHINGTON, D. C., *April 26, 1892.*

The committee met pursuant to adjournment.

The clerk called the roll, and there were present, the chairman and Mr. Washington; absent, Mr. Wadsworth.

TESTIMONY OF BRAINERD H. WARNER.

BRAINERD H. WARNER, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I was originally a dealer in real estate. I am now president of the Washington Loan and Trust Company; I am interested also in the firm of B. H. Warner & Co., real estate brokers, No. 916 F street NW., this city.

Q. Are you familiar with the value of land, without considering the improvements on any particular piece of land, on F street between Ninth and Fifteenth streets NW.?—A. Well, I have had a good deal of experience with it during the past twenty years.

The CHAIRMAN. Mr. Warner, since you are a representative land owner and have expressed a desire to be present at our meetings and have subpoenaed certain witnesses, the committee will be very glad to have you act in behalf of the owners of land. We will subpoena any witness you may suggest, and you may examine them; we to cross-examine them.

Mr. WARNER. I accept, and will from time to time suggest the names of witnesses.

(Mr. Warner then suggested the name of Mr. Glover.)

The CHAIRMAN. The clerk will please issue a subpoena for that gentleman.

Q. Will you give the committee your estimate of the true value in lawful money of the land in square 377 in the city of Washington.

(The witness was here at his request handed a plat book of the real estate in the city of Washington.)

The WITNESS. I would like to preface my answer with a little statement that will perhaps be explanatory.

The CHAIRMAN. Go on, sir.

The WITNESS. If you want to ask me what the impression of the community is——

The CHAIRMAN. I do not care to ask that.

The WITNESS. I would like to give you my general ideas of the values of property, because it might explain my testimony. I would like to state to you how I get at F street values.

The CHAIRMAN. You can make your answer as long as you like, but please confine it first to the question. The question is, Will you give the committee your estimate of the true value, in lawful money, of the land in square 377, in the city of Washington?

The WITNESS. Your idea is to get a fair assessment of the value, and what you ask me is with reference to obtaining information that may be of use in determining what is a fair assessment of the value of property. Do you want the saleable value of the property—what I think it would sell for?

The CHAIRMAN. We want the true value in lawful money. Now we will give you the opinion of the attorney for the District, if you want it, or any information you may desire as to true value.

The WITNESS. I would like to have that, because I think you are in a position here to do the District a great injustice, and that is also the opinion of a large number of our people; not intentionally at all, but I think that the idea exists among people that you gentlemen think our assessment here is on an unfair basis; of course we all acknowledge that it has had imperfections in times past, and we hope that they are being corrected now.

The CHAIRMAN. I will read now from the letter of the assistant attorney for the District of Columbia, S. T. Thomas, of date July 6, 1891, in answer to a request for an interpretation of the words "value," "true value," and "valuation:"

I am asked by one of the assistant assessors to interpret the words "value," "true value," and "valuation," found in the law of 1883. The word "value" may mean one of two things, the utility of an object, or its purchasing power. Value differs from price in this, that the price of a thing may be above or below its value. The word "value" as used in the tax act of 1883 means, I think, market value; that is, not what a piece of property would bring at a forced sale, but what persons generally, if those desiring to purchase were found, would be willing to pay for it.

That is his interpretation. It is in that sense that the committee would like the value on block 377.

The WITNESS. Well, I think that where you take the value of one lot

and put a figure on it the price would be much larger than if you took the whole street. If you imagine the condition of things where the property on a whole street would be placed upon the market, the valuation would be very much depressed. I can give you my idea of the valuation of any one piece of property.

The CHAIRMAN. We want all of that square in any way that you choose to give it.

Mr. WASHINGTON. Give it in any way you like and explain the manner in which you reach your figures.

The WITNESS. I have seen this property grow from a value of—for instance the property I own, the east half of lot 17, square 377, I paid about \$2 a foot for it in 1876, and I have seen F street property go all the way up to its present figures. I regard its growth as unwarranted and sporadic, and I think people have placed entirely too large figures upon it. In case of a panic I think the values would melt away at least 33 per cent.

Mr. WASHINGTON. There might be such a panic as would melt it away 99 per cent.

The WITNESS. Yes. Now I will give you just my idea. As I say, I have seen it go from \$2 per foot to its present valuation; we paid, I think, between \$24 to \$25 a foot for the property at Ninth and F streets, where the Washington Loan and Trust building is located.

The CHAIRMAN. Please describe it?

The WITNESS. I think it is about 52 feet 8 inches on F street by, say, 116 on Ninth street, if I remember correctly, with an "L."

The CHAIRMAN. When was that purchased?

The WITNESS. I think in the year 1889; we gave about \$24 a square foot for it, on which we erected a fine improvement; a fireproof building; at that time the price we paid was thought to be very high.

The CHAIRMAN. Do you consider it high to-day?

The WITNESS. Twenty-five dollars is what I would consider to-day a low valuation for any specific purpose.

The CHAIRMAN. What do you consider it worth to-day?

The WITNESS. I would not consider that property worth to-day, for any specific purpose for which it can be utilized as a fair business investment, over \$35 a foot. You can not make it pay 6 per cent on that valuation, \$35 a foot.

The CHAIRMAN. What interest can you make it pay on that price?

The WITNESS. At \$35 a foot?

The CHAIRMAN. Yes.

The WITNESS. Well, you can probably make it pay from $4\frac{1}{2}$ to 5 per cent; I mean with a building such as is demanded by the wants of the corner.

The CHAIRMAN. Please take the value from that on-up F street—the next lots?

The WITNESS. Well, the next lot appears to be parts of 19 and 20, with a depth of about 58 feet. Their valuation would be, I suppose, \$25 to \$30 a foot.

The CHAIRMAN. Please name the numbers on here [indicating plat book], and what value you put on them, so that we can get your estimate clearly of the entire block.

The WITNESS. I would say, then, taking the west half of lot 19, which appears to be 116 feet deep, 4,500 square feet in the lot, that it would be worth \$10 a foot, and that is a good valuation for it.

The CHAIRMAN. You consider that its true value, what you could sell it for?

The WITNESS. I mean that is what you might expect to sell it for under a moderately fair market. I do not mean what you could sell it for under a "boom;" I mean under a fair ordinary market.

The CHAIRMAN. Now, take lot 18?

The WITNESS. I see that that amounts to \$45,000. You take any piece of property costing \$45,000, and you have to spend \$55,000, making the investment \$100,000 to be a good one; I mean to build a building suitable to the cost of the lot. Now, how are you going to get an income out of that? That is the question with people who invest. Here is lot 18, that is 116 feet running back to an alley; I would value that at about \$10, and I would value the west half at about \$8 a square foot.

The CHAIRMAN. The east half you value at \$10 and the west half of lot 18 at \$8?

The WITNESS. Yes, sir. I own the east half of lot 17, and that I value at the same as the others, about \$8 a square foot; the east half of lot 17 at about \$8.

Mr. WASHINGTON. You would not take that for it to-day, would you?

The WITNESS. I do not want to sell it; I mean if I did want to sell it, I would not take \$8 for it.

Mr. WASHINGTON. What would you take for it?

The WITNESS. I do not want to sell it; it is my place of business.

Mr. WASHINGTON. What would it bring if you put it up at auction?

The WITNESS. I paid about \$24,000 for the building on that lot, which is a fair building. That building, even at \$8 a foot, would bring the value of the lot up to more than \$35,000.

Mr. WASHINGTON. Are you figuring on both lots or just the half?

The WITNESS. I am figuring on half of it. If I put an investment in there that requires \$80,000 I have to get 10 per cent out of it to pay for expenses of running an elevator, repairs, taxes, and general service, etc.; then it would not leave a 5 per cent investment.

Mr. WASHINGTON. How long have you owned it?

The WITNESS. Since 1876; and I paid a little less than \$2 a foot for it.

Mr. WASHINGTON. Has the one next to it been sold?

The WITNESS. Yes, sir; within the last two or three years.

Mr. WASHINGTON. What did it bring?

The WITNESS. I can not be accurate about it; it has a side alley, and I think sold for about \$46,000 or \$47,000.

The CHAIRMAN. You put the east half of lot 17 at \$8?

The WITNESS. Yes, sir.

The CHAIRMAN. And the west half?

The WITNESS. The west half I would not value at more than \$13 or \$14 a foot; I will say from \$13 to \$15 a square foot.

The CHAIRMAN. Please put a definite figure.

The WITNESS. There is such a wide margin between valuations that I can not do it.

The CHAIRMAN. And what are the improvements worth on your lot, on the east half of lot 17?

The WITNESS. Between \$20,000 and \$24,000. I see you are looking at the tax list. I do not know anything about the present tax assessments.

The CHAIRMAN. Now please take lot 16.

The WITNESS. Lot 16 I would value at about the same, the east half of it.

Mr. WASHINGTON. About the same as this one that you estimated at from \$13 to \$15?

The WITNESS. Yes, sir; that would be a fair market price; I do not mean a market price under a boom, but what it is actually worth in lawful money.

The CHAIRMAN. What you could get for it under ordinarily favorable circumstances?

The WITNESS. I mean to say, if this property was put up at auction, what you could get for it.

The CHAIRMAN. Under favorable or unfavorable circumstances?

The WITNESS. Not the most favorable circumstances.

The CHAIRMAN. Under the most unfavorable?

The WITNESS. No, sir; under ordinary circumstances, without reference to any imaginary valuation and without reference to any great depression.

The CHAIRMAN. Please take the west half.

The WITNESS. I would put that about \$8 per foot.

The CHAIRMAN. The east half of 15.

The WITNESS. I would put that at about \$8 a square foot, and the west half, which is shorter, from \$9 to \$10 a foot.

The CHAIRMAN. Please take lot 14.

The WITNESS. Lot 14 I would put at about the same, \$10 a square foot, about the same as the west half of 15.

The CHAIRMAN. Lot 13.

The WITNESS. That is a very small shallow lot, 58 x 61.

The CHAIRMAN. Perhaps you had better take 12 and 13 together.

The WITNESS. No; they are owned by different parties; a man named Walsh owns a saloon on the corner.

The CHAIRMAN. Take them separately then.

The WITNESS. I should value lot 13, taking it as a whole, at about \$15 a foot; say from \$15 to \$17.50 a foot. No; I should say \$20 a foot.

The CHAIRMAN. Take lot No. 12.

The WITNESS. Lot 12 is on Tenth street, right below; that is a shallow lot. I should value that shallow lot at between \$6 and \$8 per square foot.

The CHAIRMAN. Take 10 and 11 together, they are alike.

The WITNESS. They have an alley here (indicating) and are a little wider; I should put them about the same, \$6.

The CHAIRMAN. Now take No. 9.

The WITNESS. Well, this is on the car line; I should suppose \$5 or \$6. I want to say to you, gentlemen, that I think my values are conservative. I have not been actively in the real-estate business for four or five years, and I may be more conservative about values; I think I am.

The CHAIRMAN. Then take No. 8?

The WITNESS. I value lot No. 13 at about \$20; I value lot 8, at the corner of Tenth and E streets, at about \$12 a foot. For the purpose of taxation I should not value it as high.

Mr. WASHINGTON. We want you to value it according to the law that we read you in the letter.

The WITNESS. Yes, sir; I would value the west half of lot No. 7, in connection with lot 8, at \$5 a foot, and the east half of lot 7 at \$3.50 a foot; the west half of lot 6 at \$3.50; the east half of lot 6 at \$3; the west half of lot 5 at \$3; the whole of lot 4 at \$3; lot 3 at \$3; lot 2 at \$3.50 to \$4; lot 1, around here at the corner of Ninth and F streets, I would value at about \$15 a square foot; lot 24, fronting on Ninth street altogether, I would value at about \$10 a square foot; lot 23, taken as a whole, I should value at about \$10; lot 22, which is a little farther up, at about \$12.50; I value the property of the Washington Loan and

Trust Company, situated on part of lots 20 and 21, at about \$35 a square foot; the balance of lot 20 at about the same as the east half of lot 19. These are given an additional value because they are an addition to the corner.

The CHAIRMAN. Do values in some sections of the city on land alone change pretty rapidly?

The WITNESS. They have changed very rapidly. For instance, the erection of one large building like the Washington Loan and Trust Building will send up values 33 per cent. Washington has a very excitable market, in my opinion.

The CHAIRMAN. Under those circumstances do you not think that a valuation every three years is a little too long a period?

The WITNESS. No, sir, I do not; I think one reason why we have grown is because our values here have been low all through the city, outside property as well as inside. Now, I notice you confine that question to inside property.

The CHAIRMAN. We have taken outside property already from other witnesses. Do you think it is right or fair in taxing property or assessing property to assess it at its full market value?

The WITNESS. I think it is very unfair to assess it at its full market value with reference to a single piece. If you will permit me to explain, I have been on several appraisement committees, and it is always a very difficult thing to determine. For instance, in appraising two squares, you take the opposite side of the street, and the values are often different. In assessing the taxes, if you assess at the market value to-day, you might take one piece that had some value given it by particular circumstances, and you will put a very high figure on it, or you could take a dozen pieces and calculate the condition of things where they might be thrown on the market at the same time.

The CHAIRMAN. That would be extraordinary, would it not?

The WITNESS. Possibly; at the same time that is one way to make a tax valuation, to make a fair one; not to take a particular piece and put a very high value on it.

The CHAIRMAN. What should be the aim?

The WITNESS. The aim, I think—supposing for instance, that one-third or half of this property should be thrown upon the market, what would it bring; that is it.

The CHAIRMAN. Would it not be right to take the full market value of all property?

The WITNESS. I should say if you did that—and I am glad you asked that question—that it would bring about a very great hardship to our District. The property down around Lincoln Square has been sold, some of it, for \$1.50 a foot, which I consider a most extraordinary price. I do not see how it could be obtained, how people are willing to pay it, because I have seen the same property sold for 5 cents a foot.

The CHAIRMAN. If your rate is lower? You do not understand the rate to be necessarily the same?

The WITNESS. Well, if the rate is the same you keep the burden down. Now, you observe a man coming from the West; you, Mr. Chairman, for instance, come from Cleveland; I have known several people to leave Cleveland because the taxes are too high.

The CHAIRMAN. On personal property?

The WITNESS. No; on real estate.

The CHAIRMAN. I think not, Mr. Warner.

The WITNESS. I could name them, but I do not want to do it, as it might be invidious.

The CHAIRMAN. Probably on account of personal property, not on account of the tax on real estate, because we are proverbially low.

The WITNESS. There might have been exceptional cases.

The CHAIRMAN. Because when they leave Cleveland they do not take their real estate with them, they carry their personal property. Do you think you can buy any of the property in square 377 for the prices you have given?

The WITNESS. I do not think you can; I do not think parties want to sell it.

The CHAIRMAN. Do you think you can buy any of it at 50 per cent more than you have given?

The WITNESS. Yes, sir; I had an option on one piece a short time ago at the same price I gave for the Loan and Trust property.

The CHAIRMAN. What piece is that?

The WITNESS. I had an option in the past year on Masonic Temple, on the opposite side of the street, a better piece of property than the Washington Loan and Trust Building, and did not take it.

The CHAIRMAN. What are the dimensions of that lot?

The WITNESS. I really can not recall it at present. It is on the corner immediately opposite.

The CHAIRMAN. You were offered it at \$35 a foot?

The WITNESS. I had an option on it for some time.

The CHAIRMAN. But on square 377 you say you know of no property you could buy there at your figures?

The WITNESS. No, sir.

The CHAIRMAN. Do you know of any you could get for 50 per cent more?

The WITNESS. I do not know, because I have not looked around to see. As I told you, I am not actually in the business. The people now are clamorous to get the highest prices they can obtain under the influence of favorable circumstances.

The CHAIRMAN. Has that not always been so?

The WITNESS. Yes, sir; but we have not always had the favorable circumstances we have to-day.

The CHAIRMAN. You say your figures are conservative because you have practically been out of the business for some time.

The WITNESS. Because I have seen this F street property grow up from \$2 a foot to the rates they are charging now, and I can not see any such increase in the real business transacted as to warrant the inflation of prices.

The CHAIRMAN. And this high rate you speak of is higher than the figures you have given, that they are asking?

The WITNESS. Yes, sir; they are asking more than I have given.

Mr. WASHINGTON. That advance you speak of has been going on in every city in the country. I have seen property in Nashville, property that sold at \$10 a front foot, advance to \$50 a front foot and more.

The WITNESS. Still, you would not think of putting a valuation of \$50 a front foot on it?

Mr. WASHINGTON. It is always valuable for what it sells for; land that sold for \$20 will sell now for \$50 a front foot, residence property.

The WITNESS. If you ask me what a piece of property might bring to-day, as an appraiser of the court, that is one thing, and if you ask me to give you what I think is a fair market value, that is another.

The CHAIRMAN. You would think the fair market value would be less than what it would bring?

The WITNESS. Yes, sir.

The CHAIRMAN. How much in percentage would you say?

The WITNESS. I do not think I can recollect that. I could not give you any definite ratio.

The CHAIRMAN. But very much more you would expect you might get than what you are putting here as a cash value at auction.

The WITNESS. No, sir; if you put any considerable amount of that property up along F street, while you might get more for one piece I think the price would be lower.

The CHAIRMAN. There is nothing offered there for sale just now, you say?

The WITNESS. Oh, no; I did not say there was nothing being offered; I suppose there are people who would always sell if they can get a big price.

(Mr. Warner stated to the chairman that if he desired he would give him what the general impression of the public was regarding the investigation of assessments.)

The WITNESS. You introduced a bill regarding this single tax, and from your remarks before the Builders' Exchange, as well as from the language of the resolution introduced by you providing for this investigation, we were given to understand, or gained the impression, that this investigation was with particular reference to establishing in the District of Columbia the single tax, or of demonstrating the working of the single-tax theory. In other words, the levying of a tax upon land, and we were also under the opinion that while this matter has been under consideration by you, you have gained the impression that our tax, the tax upon business property and residence property in certain sections of the city, is very much too small, while the tax on property in the suburbs is very much too large. In other words, that a certain number of citizens who have made themselves prominent in local affairs have been given advantages which they have not deserved in the line of taxation; in other words, that favoritism has been shown them by the assessors, and also——

The CHAIRMAN. Can I stop you for a moment? I want to state that this investigation has nothing to do with bill No. 319 that you speak of, the single-tax bill, and the investigation was brought about from the fact that some testimony come out before the Commissioners showing that there was this inequality and this favoritism which I believe exists, and which I proved to the satisfaction of the Commissioners did exist, and in their written report they say that my figures are conservatively and fairly prepared, and I believe I have the indorsement on the part of the Commissioners that this inequality does exist, and this investigation is to prove that.

The WITNESS. I am not suggesting for one minute that your motives are not of the very best.

The CHAIRMAN. I only wanted to correct your impression.

Mr. WASHINGTON. We only want to agree with you on that point. When this investigation was started we had no idea of involving in it the single-tax theory; that has nothing to do with it. I am free to say that I am not an advocate of that system of taxation, and therefore that impression in the mind of the public is entirely erroneous.

The WITNESS. I wanted to give you the opportunity to correct that in the public mind.

Mr. WASHINGTON. With Mr. Johnson, I want to be understood as stating that our object is to try and bring about an equalization of assessments in the District, and a raising of the assessments to a fair and proper valuation. That is all. In doing that it does not necessarily

increase the amount of taxes that the people have to pay; it may distribute the burdens a little differently, but it is unnecessary to raise a great amount of tax because a lower rate on a largely increased assessment will have the same effect as now, as the same amount of revenue will be secured.

The WITNESS. I am glad you are doing that. I want to say this: If you tax every place of business so that we cannot make it profitable we will have to sell. My tax is very large in proportion to the income of my building.

The CHAIRMAN. I think it is too large. You have benefited all of the property around there.

The WITNESS. I see, but my tax in proportion to the income of my building, No. 916 F street, is very large. If you can increase our business, increase our income, we are perfectly willing to pay the tax; but I want to say to you gentlemen that this city has grown very largely. If you will permit me to refer to the report of the president of the board of trade, you will find a reference made to the taxation in the District of Columbia, in which it says:

In many sections values have changed so rapidly that it has been difficult to realize a perfectly equitable adjustment. Assessments, however, should not be based on a few sales made at extravagant and fancy prices, but should be regulated largely by the producing capacity of the property. During the past years millions of foreign capital have been attracted to our city. One of the principal inducements has been our fair and equitable rate of taxation. It is hoped and believed that these conditions will not be disturbed by the new board of assessments.

I want to say that I think this present board is composed of more intelligent men than we have had levying taxes for a long time. We have had here frequently on the board of assessment men who were not up to the times. I am free to say that I believe these gentlemen are thoroughly conscientious. I do not know a single figure that they have placed as an assessment on any one piece of property, and have not talked with them about it at all. You said the other evening, Mr. Johnson, that you thought our assessments here ought to be raised, as I understood you, from \$76,000,000 to \$300,000,000.

The CHAIRMAN. Yes, I said that, and that some of your assessments were very low.

The WITNESS. If you assume a position of that kind it places the people here, who are willing and anxious to bear their part of the burdens, in a very bad light.

The CHAIRMAN. You imagine I want to raise an increased sum. We say that 76 cents on the dollar will raise more than \$1.50 if you put a fair value on land.

The WITNESS. If you look at the taxes levied in every city in this country you wont find one down as low as 76 cents. Take Mr. Washington, for instance; he will look at that and say, when our bill comes up for appropriation, "76 cents? My people wont stand that; it has to be doubled; I wont submit to it."

The CHAIRMAN. You are afraid that Congress will cease paying half if it is valued at its true value?

The WITNESS. No, because I claim that Congress has made a contract with this city to do that.

Mr. WASHINGTON. I do not think you need have any fear as to the General Government paying its proper share toward the expenses of the District of Columbia; they have too much property here, and they justly owe you people a great deal.

The WITNESS. I would like to commend to you gentlemen a statement by Mr. Theodore Noyes, of the Evening Star.

The CHAIRMAN. You ask leave to print. Mr. Wadsworth would object; but he is absent, and Mr. Washington and myself could hardly with consistency refuse.

The statement as referred to is as follows:

At the annual banquet of the Board of Trade in 1891, Mr. Theodore W. Noyes responded to the toast, "The Centenary of Washington City," as follows:

As this double commemoration suggests, the American patent system and the District of Columbia narrowly escaped being twins. For several days, culminating to-night, we have eulogized the first of these approximate twins. We have ascribed the vast national advance of the century in large part to this birth of a century ago. We have ranked among the typical heroes of the age the wonder workers whom this infant, now grown to manhood, has fostered. We consider that no home at the capital, in marble or granite, can be too spacious or too handsome to be suitable for its accommodation. In short, we of Washington say to the inventors: We have praised your hundred-year-old infant and honored its birthday. There is reciprocity in these things. It is time that Columbia's baby was dandled and petted; and as one of the nurses of this infant to-night I propose that we give our baby a show.

THE DISTRICT A CENTURY AGO.

When the District corner-stone was laid, thriving Georgetown was its nucleus of settlement on one side of the river and Alexandria or Belle Haven on the other. The side of Washington itself, a plain, fringed by gradually sloping heights, was a series of pastures, marshes, patches of cultivated ground, and hills green with many trees. It was pleasing to the eye and well adapted to its destined purpose, but those sections now most desirable, both for business and residence purposes, were then the least attractive. The river front was the choicest portion of the city, if the opinions of the earliest purchasers are considered. Capitol Hill was a dense forest, scarcely touched by the woodman's ax. Pennsylvania avenue was a deep morass covered with alder bushes. Massachusetts avenue, in the now fashionable northwest, was a bog, undrained in part, as late as 1862, in which year Anthony Trollope, the English novelist, waded along it knee-deep through snipe grounds. Upon this foundation the capital of to-day has been built—the modern Washington, the focus of national politics, the great gathering place of the people in conventions assembled, with its quarter of a million of population, rapidly increasing and spreading the capital over the whole of the present District; a city sustained, approved, and adorned by the annual expenditure of more than \$5,000,000; with a clean and economical nonpartisan municipal government, a marvel in this respect among great American cities; with surface remodeled; with more smooth streets than any other city in the world; with enterprising business houses, relieving Washington from dependence upon its great commercial neighbors; with manufactures, not imposing, but respectable, that caused Washington, according to the census of 1880, to rank among the twenty leading American cities; with manufacturing establishments that have more than doubled in number since 1880, notwithstanding the design has been to retain Washington's preëminence as a residence city by encouraging only light and clean manufacturing; with broad streets shaded for several hundred miles with nearly 70,000 trees, destined to make Washington the forest city; with attractive suburban drives, including those which traverse the recent grand acquisition of Rock Creek Park, with its winding stream and its wild and diversified scenery; with parks and reservations, given a picturesque beauty by shrubbery and abundance of foliage, statuary, fountains, and flowers, and with costly dwellings, showing the most varied and pleasing architecture, springing up in rapid succession, where Trollope sunk knee-deep in mud.

IN TWENTY YEARS.

The greater part of this transformation has been accomplished within the last twenty years. The wretched condition of the capital for three-fourths of a century is attested by all descriptions. In connection with the gift to it of nearly three-fourths of the soil of Washington, in order to sell lots carved from this gift, the nation promised that Washington should be the permanent seat of government, and pretended that this permanent capital would be improved at national expense without regard to the scanty population that would be at first attracted to it. Having secured this magnificent donation and pocketed the proceeds from the sale of lots the nation utterly failed to meet its promises. It frequently threatened to remove the capital, which meant, of course, the death of Washington. It practically abandoned the work of street improvement and capital-making to the scanty resident population. There was no wonder that the District grew slowly.

The nation has now returned half way to the original and appropriate idea of the Federal city. This guardian, who for three-fourths of a century was unfaithful to his trust, now, without making the slightest restitution for the wrongs of the past, shares the expenses of the ward whom he equitably bound himself in the beginning to support—and some men call it charity! The people of the District are not subject to this or any other reproach upon their public spirit, so far as their relations to the nation are concerned. They have risked life and shed blood in every national war. They furnished the first volunteers, and supplied more troops in excess of their quota in the civil struggle than any State except one. They have paid their proportion of every national tax, direct and indirect. They have contributed in proportion to population far more than any other American community for national purposes. They gave to the nation five-sevenths of the soil of Washington—an acquisition pronounced by Jefferson “really noble.” They thus supplied a fund from which most of the original public buildings were erected. Those that since then have been constructed at national expense are offset by attractive homes aggregating millions of dollars in value with which they have adorned the city and swelled its taxable property. Nearly all the work of street improvement and capital-making, which for three-fourths of a century was done, was done by them. From 1790 to 1878, according to the report of a Secretary of the Treasury, they expended \$14,000,000 more than the United States in this, the nation’s task, in addition to \$25,000,000 spent on local government, schools, and for other municipal purposes. Under this burden they worked themselves into virtual bankruptcy in 1835, and so in recreating the city after 1870 the main expense of the achievement was represented by the grievous debt of some \$20,000,000. In both cases they took upon themselves national burdens, and were led by public-spirited motives, as the Senate committee reported in 1835, into expenditures which did not properly belong to them.

They are none the less public-spirited, patriotic citizens because they owe no allegiance to a State. Their city has planted the roots of its existence and prosperity in the spirit of American nationality, and has flourished as that spirit has been strong. For themselves, they are Americans or they are nothing; the people of No Man’s land; men without a country. It is well for the nation that their Americanism is intense in proportion to its concentration, for that which lies next to the heart of the Republic must be flesh of its flesh, pulsating with its warmest, richest life-blood, or it will be a canker, collecting alien poisonous matter and eating at the nation’s vitals.

THE DISTRICT’S SECOND CENTURY.

In the District’s second century it will keep step in every respect with the progress of the nation; it will be the Republic in miniature. In every branch of municipal development, whether attractiveness, health, trade, commerce, convenience, or comfort is the aim, the city will be made a model. With the Republic’s intellectual growth there will be a corresponding increase in the capital’s importance as the brain center from which influences in every branch of learning, in science and art, in education, in literature and politics, flow to every corner of the nation. The fact will also be fully recognized that trees and parks and streets, and structures of granite and marble, do not alone suffice to constitute the ideal capital. There must be men full of the national spirit and fit, from favoring conditions, to show forth the American character in the blaze of the capital to the inspection of the world.

And when all possible wonders have been wrought in the inanimate capital its people will be considered. They will be relieved from the burden of ancient laws, utterly unfit for a modern community, that cling about their necks and choke them like the old man of the sea on the shoulders of Sinbad. Injurious discriminations in all respects will be removed. The District has been pronounced a State under the treaty with France, a construction conferring privileges on aliens, but not a State under the Constitution, whose people can sue in the Federal courts. The Supreme Court of the United States says in express terms that we stand in a more unfavorable attitude toward the national judiciary than aliens. The District is a State when direct taxes are to be collected, but not a State when representatives are apportioned, though the Constitution couples the two things.

In the District’s second century, when its population numbers half a million or a million, it will be not merely a State when burdens are imposed, but sometimes, at least, without radical change in the municipal government, a State when privileges are bestowed. In the good time to come the Washingtonian as well as Washington will be exalted. Nativity at the capital of the proud Republic of ancient times was a world-wide honor. To be a Roman was to be greater than a king. Birth at the capital of the modern Republic, far greater than that which ruled from the Seven Hills, will be the just cause of a profounder pride than that which found expression in the words, “I am a Roman.”

SAID A HUNDRED YEARS AGO.

The orator at the laying of the District corner-stone one hundred years ago petitioned and prophesied: "From this stone may a superstructure arise whose glory, whose magnificence, whose stability, unequaled hitherto, shall astonish the world."

Upon the threshold of the District's second century we can do no better than repeat this prayer and prophecy, so suggestive of the bright anticipations concerning the Federal District which prevailed at its creation. We sometimes hear lofty reflections concerning the narrow views of the founders of the Republic. In respect to the capital we shall do well if we fulfill the hopes, prophecies, and anticipations of the forefathers and not prove narrower than they. It was their idea that Washington should be a Federal city, developed by the nation and subject to its control; but it was not their idea that it should be without people. Its grand framework indicates the expectation of a large population. Washington's imagination covered the fair fields and wooded hills of his namesake city with the homes of a numerous, busy, and happy people, a people not to outward appearance aliens politically, and less than aliens judicially, but clothed with all American rights not absolutely inconsistent with the fostering control by the nation of the national capital. He predicted that the city of the nation a century thence, if the country kept united, would be, "though not as large as London, yet of a magnitude inferior to few others in Europe."

One hundred years ago a great mind conceived the idea of a statue of perfect symmetry and beauty. This idea was impressed upon the snowy whiteness of the heart of a huge block of marble and the statue's outlines lay hid beneath the stone's rough and discolored surface. For a century at intervals men have worked with drill and blast, with pick and chisel, to reach the heart of this rocky mass and to expose to sunlight and the eyes of men the perfect statue. Stroke by stroke the statue is uncovered. Inch by inch it rises in dazzling and perfect loveliness from all that is coarse and rude and ugly in the stone and earth of its surroundings, as the goddess of beauty rose in days of old from the rough gray surface of the ocean. The century-old ideal of Washington is fast becoming real, tangible, visible. It is for us of the Republic's second century to give the finishing touches to the work designed one hundred year ago. Let no blundering chisel mar the delicate outlines of the developing statue whose beauty, half concealed, half exposed, assures to America and the world a perfect embodiment of the ideal capital.

The CHAIRMAN. You stated that when your company built your fine building there, the Washington Loan and Trust building, that you raised the value of ground all around there one-third?

This WITNESS. Yes, sir.

The CHAIRMAN. I agree with you fully. Now, while this has nothing to do with this investigation, I want to state to you what my individual belief is. It is that you ought not to be fined for doing such a good thing; that you ought to be relieved from all the taxes on that building, because you did this; and that the taxes of those other people who receive the benefit of what you have done should be raised in order to make up what is saved to you, and I think business would be greatly helped by the scheme. I think no argument could be better than your own, which is, that you have raised the value of surrounding property 33 per cent and should not be fined for it.

At this point the committee took a recess for thirty minutes.

AFTER RECESS.

The committee reassembled at 1.30 o'clock p. m.

GEORGE A. ARMES—Recalled.

By the CHAIRMAN:

Q. Will you please give the committee your estimate of the value in lawful money of the land in the following squares, as you did of the blocks valued in your previous examination; take square 224?—A. Square 224, lot 1, I should consider worth \$75 a square foot. It is

rumored that the owner of that block declined an offer of \$77 a square foot for it. Lots 2, 3, and 4, I should judge to be worth \$20 a square foot; lots 5 and 6, \$65 a square foot; lots 7 and 8, \$50 a square foot; lot 9 will bring \$60 a square foot; lot 10 will bring \$25 a square foot; lot 11, \$20 a square foot; lots 12 and 13, \$18 a square foot; lot 14, \$40 a square foot; lots 15 and 16, \$18 a square foot.

Q. Please give the values of land in square 225.—A. Square 225, lot 1, \$65 a square foot; lots 2 and 3, \$40 a square foot; lots 4 and 5, \$35 a square foot; lot 6, \$50 a square foot; lot 7, \$45 a square foot; lot 8, \$55 a square foot; lot 9, \$30 a square foot; original lots 10 and 11, now 1, 2, 3, 4, and 5, \$20 a square foot; lot 12, \$30 a square foot; lot 13, \$50 a square foot; lots 14 and 15, \$30 a square foot; lot 16, \$35 a square foot.

Q. Please give the values of land in square 254.—A. Square 254, lot 1, including of 27, average \$30 a square foot; lot 2, and of 3, \$25 a square foot; balance of 3, 4, 5, and 6, \$16 a square foot; lot 7, \$18 a square foot; lot 8, \$19 a square foot; lot 9, \$45 a square foot; lot 10, \$30 a square foot; lots 11 and 12, \$16 a square foot; lot 13, \$25 a square foot; lot 14, \$45 a square foot; lot 15, \$25 a square foot; lot 16, \$22 a square foot; lot 17, \$20 a square foot; lot 18, \$20 a square foot; lots 19, 20 (at present 28 and 29), and 21, \$18 a square foot; lot 22, \$25 a square foot; lot 23, \$35 a square foot; lot 24, \$18 a square foot; lot 25, \$16 a square foot; lots 26, 30, 31, and 32, \$16 a square foot.

Q. Now, please give us the values in square 289.—A. Square 289, lot No. 1, \$50 a square foot; lot 2, \$25 a square foot; lots 3 and 4, \$20 a square foot; lots 5, 6, of 7 and 30, \$30 a square foot; lots of 8, of 9, 31, 32, 33, 34, and 35, \$16 a square foot; lot 10, \$14 a square foot; lot 11, \$35 a square foot; lot 12, \$20 a square foot; lot 13, \$15 a square foot; A, B, and C, \$15 a square foot; lot 15, \$15 a square foot; lot 16 \$20 a square foot; lot 17, \$30 a square foot; lot 18, \$17 a square foot; lot 19, \$16 a square foot; lot 20, \$20 a square foot.

Q. Please give us the values in square 290.—A. Square 290, lot 1, \$35 a square foot; lot 2, \$17 a square foot; lot 3, A, B, and C, \$13 a square foot; lot 5, \$20 a square foot; lot 6, \$35 a square foot; lot 7, \$20 a square foot; lots 8 and 9, \$16 a square foot; lot 10, \$18 a square foot; lot 11, \$50 a square foot; lot 12, \$22 a square foot; lot 13, \$20 a square foot; lot 14, \$18 a square foot; lot 15, \$22 a square foot; lot 16, \$35 a square foot; lot 17, \$20 a square foot; lots 18, 19, and 20, each \$17 a square foot.

Q. Please give us the value of land in square 320.—A. Square 320, lot 1, \$45 a square foot; lots 2 and 3, \$30 a square foot; lot 4, \$40 a square foot; lot 5, \$20 a square foot; south half of lot 6, \$18 a square foot; north half of lot 6, \$22 a square foot; lot 7, \$30 a square foot; lots 8 and 9, \$20 a square foot; lot 10, \$35 a square foot; lots 11 and 12, \$20 a square foot.

Q. Please give us the value of ground in square 321.—A. Square 321, lot 1, \$35 a square foot; lots 2 and 3, \$20 a square foot; lot 4, \$25 a square foot; lots 5, A, B, C, D, and E, \$15 a square foot; of 9, \$32 a square foot; F and G, \$25 a square foot; lot 11, \$22 a square foot; lot 12, \$40 a square foot; the whole of lot 13, \$20 a square foot; lots 14, 15, and 16, \$16 a square foot.

Q. Are you familiar with this property?—A. Yes, sir.

Q. Would it, in your judgment, be easier to buy or sell the property at the prices you have given?—A. It would be easier to sell than to buy, in my opinion.

B. H. WARNER—Recalled.

By the CHAIRMAN:

Q. What are the dimensions of the Washington Loan and Trust Company's lots?—A. The front is 116 feet on Ninth street, and 52 feet 8 inches on F street. The lower half of the lot runs back by a width of 30 feet on Ninth street, 122 feet 2 inches deep, and it contains 8,200 square feet.

Q. What is the value of the building?—A. The building alone cost about \$380,000.

Q. What is the amount of the annual income from that building?—A. We hope it will be about \$50,000 a year.

Q. Does that include the rent of the offices you use for the Trust Company or do you exclude that?—A. I include that.

Q. That \$50,000 includes the rent of all the space, including the amount you charge to the Trust Company for such use?—A. Yes, sir.

Q. The total revenue then, if all the building was rented to strangers, would be about \$50,000?—A. Yes, sir.

Q. And for this \$50,000 rent you furnish your tenants with heat and light?—A. Yes, sir.

Q. And janitors, etc?—A. Yes, sir.

Q. Have you any idea what that costs, your heat, light and janitor service, a year?—A. Well, I suppose that would cost us \$15,000 a year.

Q. That would make your revenue for the building, your net revenue from the ground and building, after paying expenses, about \$35,000 a year?—A. Yes, sir.

At this point the committee adjourned until to-morrow, Wednesday, April 27, 1892, at 11.45 o'clock a. m.

WASHINGTON, D. C., *April 27, 1892* (11.45 a. m.).

The committee met pursuant to adjournment.

The clerk called the roll, and there were present, the chairman and Mr. Washington; absent, Mr. Wadsworth.

TESTIMONY OF CHARLES C. GLOVER.

CHARLES C. GLOVER, having been duly subpoenaed at the request of Mr. B. H. Warner, was sworn by the chairman, and testified as follows:

Mr. B. H. Warner was, by his request, permitted to conduct the examination in chief of the witnesses from this point, subject to cross-examination by the committee.

By Mr. WARNER:

Q. Mr. Glover, you have had large experience during the last twenty years in dealing in real estate in this district, have you not?—A. I have had a good deal of experience.

Q. You have made more loans than any other one individual, I mean acting as the representative of other parties?—A. I have loaned large sums of money in the District on real estate.

Q. You are familiar with the values in different sections in Washington, in a general way, are you not?—A. I am.

Q. Along what particular streets has business property increased most in value within the past three years?—A. F and G streets; also on Ninth, Tenth, and Eleventh streets; in fact, all of the streets west of Seventh street.

Q. Do you or do you not regard the growth or the advance of property along, say, F street, as being more rapid than is attributable to the demands of business?—A. I do; in other words, the increase in the value of land has outstripped the rental value of property; it does not yield a fair income on the amount that the land is at present selling for.

The CHAIRMAN. I am going to interpose a little objection to your questions as somewhat leading.

Mr. WARNER. All we want, Mr. Glover, is information. If the chairman wants me to make my questions more indirect I will do so.

The CHAIRMAN. Just as you like.

Q. (By Mr. WARNER.) In case half a dozen pieces of property on F street were offered at public sale during the same week, what effect do you suppose such a proceeding would have on values along the line of said street?—A. I know about a half a dozen pieces where a whole block was sold—I think a whole front; I think you would find that the latter would be at a very much lower rate than the first.

Q. In other words, do you think that the——A. [Interrupting.] I think if other lots of ground came on the market at one time that would very materially decrease the sale or the value of it.

Q. As far as your observation goes, have assessments along the line of F street, especially as compared with other sections of the city, shown favoritism on the part of assessors?—A. I know nothing about what the assessors have been doing.

Q. I mean, how do assessments compare along the line of F street with respect to the other assessments in Washington?—A. I think that the assessments—not confining myself particularly to F street, but the northwest section generally—have been higher than in any other section of the District of Columbia. I think the property in Georgetown and Capitol Hill has been assessed at an infinitely lower valuation than the northwestern section of the city.

Q. Do you know of any favoritism that has been shown to any one person, or in any one instance?—A. I am not aware of any such favoritism.

Q. Take, for instance, a piece of property on F street between Ninth and Tenth streets—you know where my building is, for instance, 916 F street, and the adjoining property—do you consider that any lot, inside lot I mean, would be a profitable investment for business purposes, say with a depth of 30 feet or width of 30 feet and a depth of 150 feet, at \$50,000 or more for the business purposes of Washington. In other words, what I mean to get at is, taking \$50,000 as the cost of an inside lot, we suppose that another \$50,000 would be required to erect a building on same, do you think it would pay a desirable rate of interest for an investor as a pure business investment?—A. I do not. I can illustrate that point by a building that I put up on F street. I paid \$5 a square foot for the ground there, where the Glover building stands, between Fourteenth and Fifteenth streets on F street, and the building cost me in the neighborhood of \$60,000. The rent of that building brought in a gross revenue of about \$9,000. The expense of running it averaged something over \$3,500 per annum. Upon the original investment it paid a very fair return. Upon the present assessed

value it would yield practically no income at all. That is to say, if you put the property at the basis upon which they estimate the value, \$30 per square foot and the cost of the building, it would not yield 2 per cent on the money.

The CHAIRMAN. Who estimates that \$30 a square foot?

A. That is the value generally placed on property around there by real estate agents and others.

The CHAIRMAN. It is not assessed at that?

A. No, sir.

Mr. WARNER. You did not finish your explanation, did you?

A. I think that is all I had to say on that subject.

Q. (By Mr. WARNER:) How many feet are there in that lot?—A. Thirty-four hundred square feet in the lot. It is 30 by 113 feet, and as it is on the north side of F street, between Fourteenth and Fifteenth streets, I consider it about the best business property in Washington.

Q. Do you know of any sales of property on F street at a rate of \$60 per square foot?

The WITNESS. Let me finish what I was going to say about the building. That was the gross revenue derived from it if every room was rented, but there never was a time when there were not three, four, or five rooms vacant; consequently I did not receive that amount of income in any one year.

Q. Do you know of any sales on F street at as high a rate as \$60 a square foot?—A. Only one, the Strong property, on Eleventh and F streets.

Q. Why did he pay such a rate as that?—A. It was an extremely small piece of ground.

Q. And how situated?—A. It was a corner lot.

Q. And he had to have it?—A. I do not know anything about that. I only know he bought it and paid an extravagant price for it. It could not, in my judgment, be made to yield an adequate income on such a valuation.

Q. Do you recall any sales at \$30 per square foot on F street?—A. No; I do not recollect any such sales.

Q. Do you know of any at \$20 per square foot?—A. I told you, Mr Warner, that I had not charged my mind on this subject. I do not know; I do not remember any sales at \$20. I remember about the Strong property; general attention was brought to that piece of land.

Q. In your opinion would there be any demand for property at \$30 per square foot?—A. Not unless it was wanted by somebody for some special purpose; not as an investment or as yielding an income.

Q. Is the advance of business in Washington sufficient to warrant an investor in paying for property along a business street, such as F street, \$15 or \$20 per square foot for the erection of business property?—A. In my judgment, no. I base all the loans I make there on a much lower valuation.

Q. I asked you some time since if you knew of any instance of favoritism on the part of assessors, and you replied that you did not. I would like to ask you now with reference to the present method of assessment, if you think any better system could be devised for the assessment of property than the one at present existing?—A. I have given very little thought to the subject, Mr. Warner. I think if the present system is honestly and fairly carried out it could not very much be improved upon.

Q. Do you or do you not think that the increasing of values from 33 to 50 per cent in the District of Columbia would have—I will put that

in a little different form. What effect do you think the increasing of the tax list 33 per cent in value in the District would have on real estate and the property in the capital?

The WITNESS. What effect it would have upon——

Mr. WARNER. I will put it a little stronger. What effect would the increase in values—we will say upon the present assessments as made by this recently appointed board—have upon real estate here, the increasing of that 50 per cent.

The WITNESS. Do you mean to say taking the assessment of the present board and increasing it 33 per cent?

Mr. WARNER. Increasing it from 33 to 50 per cent.

The WITNESS. I have not the slightest idea as to what the present assessors assess the value at. If they assess property at the true value to increase it would have a very bad effect. I can not speak of what I really know nothing; I do not know at what they have assessed the values.

Q. (By Mr. WARNER.) Well, as a rule heretofore what is your opinion of valuations?—A. Generally I think in some cases the assessors have undervalued property. I think in some cases whole sections have been greatly undervalued.

Q. I would like to ask you if this has been confined to any one particular section of this city, this undervaluation, more than others, to your knowledge?—A. I think probably Capitol Hill has been more favored in that respect than any other section of the city; that the valuations have been less there than in other sections.

Q. What section has increased more rapidly in value, in the number of buildings erected?—A. The northwestern section of the city, and the assessments have been higher in proportion to the value of property. Up to very recently the increase in value of property has been very rapid the last two or three years; it has probably gone in some cases from \$1.50 to \$2, \$3, \$4, \$5, and perhaps \$6 or \$7 per square foot in the residence section of the city. You can not keep pace with that increase; and assessment made two or three years ago would seem extremely small at the present time.

Q. Have any buildings been erected on Capitol Hill during the past three years?—A. Great numbers of them.

Q. Of what character are the houses?—A. Generally small houses.

Q. Do you think the rate of assessment has had anything to do with the erection of small houses in the northeastern section, or anywhere else?—A. The small assessment of property always induces people to build; the less the tax the more likely they are to improve property. I came here very unwillingly and am really not prepared to say anything.

Mr. WARNER. I came very unwillingly, too, but I found these gentlemen so attractive and pleasant that I have been coming every day.

By Mr. JOHNSON:

Q. Mr. Glover, where is your place of business?—A. On the corner of Fifteenth street and Pennsylvania avenue.

Q. And what is your business?—A. That of banker; I am a member of the firm of Riggs & Co.

Q. Did you say that the lower you taxed buildings——

The WITNESS. I did not say buildings; property.

Q. The lower you tax property the more it will stimulate improvement in property?—A. I think so.

Q. You mean by that that the lower you tax the buildings the more

buildings there will be?—A. I was speaking generally both of real estate and buildings.

Q. You can not mean that the less you tax the land the more there will be of it, because it is fixed. Then you must mean the buildings. Am I right or not?—A. We rarely separate the assessment of real estate. Of course, we expect buildings to be assessed at their fair value and the land also; and if there is a low valuation of any particular section it is very apt to stimulate building speculation and improvements.

Q. That is, the lower the tax the higher the value of land selling and the higher the price the more improvements are likely to be put up?—A. Yes, sir; that is it..

Q. Do I understand you to say that there has been great inequality, in your judgment, in assessment in the District?—A. There have been, I think; yes.

Q. You think that is a bad thing, do you not?—A. I think there ought to be some uniformity. I think all sections ought to be evenly taxed as far as it is possible in making an assessment.

Q. That is if they take the full value in one place they ought to in all places?—A. Yes, sir; I think so.

Q. If it is 50 per cent in one place they should make it so everywhere?—A. That is exactly what I mean.

Q. Then if you found by an investigation—and you say you have investigated—that there have been inequalities, will you please tell the committee the extent of those inequalities?—A. I did not say that I had made any particular investigation, but I have constantly heard statements and have known of instances in various sections of the city where ground was assessed at an extremely low valuation.

Q. Can you specify those instances?—A. No, it comes up in this way; in making loans the assessed value of the property would be constantly brought before me; a man would come in, for instance, for a loan in some sections of the city, asking for \$3,000 or \$4,000 on a lot that might be assessed at \$500 or \$600 or \$1,000. There have been inequalities as great as that, but as I say the whole city has improved in value so much in the last few years since the older assessments were made that it does not give you any fair idea of the real value of property at the present time.

Q. Can you not name some of those lots or parcels of ground?—A. No, I have not thought of it. If I had looked over the list I should probably be able to do so.

Q. It is a general impression, you think, that that condition exists?—A. A general impression based upon knowledge at the time.

Q. And you think that in the favoritism the benefit was most largely received on Capitol Hill?—A. There and in Georgetown.

Q. Not on F street, you think?—A. No, I do not; not to as great an extent, probably; although from what has been said to me about the assessment of F street property at the present time it is very inadequate.

Q. You think, then, there has been some favoritism on F street?—A. If the statements made to me as to the assessments of F street property are true, it certainly is a very inadequate value.

Q. What are those statements?—A. The present assessment of F street property? I am speaking without any guide except mere statements that F street property is assessed as low as \$5 a foot.

Q. What part of F street?—A. From Ninth to Fifteenth streets. That would be a very inadequate assessment.

Q. For any property there?—A. For any property.

The CHAIRMAN. Would you like to see the book?

The WITNESS (referring to the book). This is the old assessment. Yes, values have enhanced enormously in the last eighteen months.

Q. (By the CHAIRMAN.) What about the statements made that the present assessments are now being prepared at \$5 a foot?—A. I have heard statements to that effect; I do not know whether they are true. I think the present board is composed of very competent men.

Q. But you do not know?—A. No, I only heard that assessments were, or had been made at as low as \$5 a foot.

Q. Who made such a statement to you?—A. I have heard it from one or two persons.

Q. Could you name them, please?

Mr. WARNER. I would suggest, Mr. Chairman, that that might possibly bring about complications. Mr. Glover is a prominent business man and may not like to make such an admission.

The CHAIRMAN. Mr. Glover, we are simply hunting for information. If we could get the names of such persons it might help us.

Mr. WARNER. These people who come to Mr. Glover have business with him confidentially as a banker.

The WITNESS. I do not care to bring anybody before the committee to answer questions of that kind. It can easily be ascertained from the assessors if that be the case.

Q. Changes of value take place very rapidly, do they not?—A. They have in the last few years.

Q. And that is true generally of an improving city, is it not?—A. Yes, sir; and Washington is an improving city.

Q. Then do you think it advisable under such circumstances to have assessments on land values made only every three years?—A. Well, I think it is fair generally to give the people a little chance for a rest; not every year to have them annoyed, harassed, and worried by having to look after their property; there are constant inequalities and you are never certain.

Q. But buildings have been assessed oftener than that?—A. Buildings are assessed when they are erected; when property is improved they assess the building.

Q. And you think the land is subject to great fluctuation?—A. I do not think three years too long a period.

Q. Yet you think the inequalities would be greater under the same kind of assessment made every three years than if made every year; that is, it would continue longer?—A. I do; yes.

Q. Do you know what the property on F street, known as Metzerott Hall, sold for?

Mr. WARNER. That is the Toner property.

A. I saw a statement in the newspapers, I think, that something like \$35 a square foot was given for it.

The CHAIRMAN. That is what I heard.

The WITNESS. I think I saw the statement.

Q. Do you know of any property on F street for which prices have been offered and the parties have refused to sell?—A. I do not.

Q. Do you know of any attempts to buy the corner of Fourteenth and F streets; the vacant corner on the northwest side?—A. Some years ago the Baltimore Sun people wanted to buy that corner.

Q. At what price, do you know?—A. No; I do not.

Q. Have you heard lately?—A. I have not.

Q. You have no recollection what the owners refused for that property?—A. I have no positive knowledge on that subject. It has been

reported that very large sums have been offered for that particular corner, it being desired for a special purpose.

Q. What would you consider a very large price per foot for that property?—A. Well, I presume that corner would sell for \$50 per square foot.

Q. Do you think you could buy it for that?—A. No; I do not think you could.

Q. Do you think you could buy it for \$75 per foot?—A. I do not think the people who own it want to sell it at all.

Mr. WARNER. Do you think it would sell at any price?

A. I would not give \$75 per square foot for it. There would be no return for your money based on any such sum.

Mr. WARNER. Do you think any negotiation with the owner of that property would be liable to terminate successfully?

A. I do not know. Of course, there is a price that would buy almost anything; but I know that the owners of that property do not care to sell it.

Q. (By Mr. WASHINGTON.) What would it bring if put up at auction?

The WITNESS. What are the dimensions of that lot?

Mr. WARNER. It is the Willard lot.

The WITNESS. I was uncertain as to the corner. The lot you are speaking of belongs to Joseph Willard. No, I do not believe you could buy it at all.

The CHAIRMAN. Now please answer Mr. Washington's questions; what do you think it would sell for if put up at auction?

The WITNESS. What are the dimensions?

The CHAIRMAN. It is 50 by 80, containing about 4,000 square feet.

A. It would sell somewhere in the neighborhood of \$250,000 or \$300,000, nearly \$50 per square foot.

Q. Do you think you could sell it readily for that?—A. I do not know about readily.

Mr. WASHINGTON. I asked what you thought it would bring at auction under the regular terms?

A. Probably not over \$35.

Mr. WASHINGTON. I do not mean under adverse circumstances.

A. I do not either, but I said if any particular business interest wanted that corner, as for instance, Mr. Warner's Trust Company or some large banking house, they would give a fancy value to be in that neighborhood, but merely putting that up at auction you probably would not get over \$35 per foot.

Mr. WASHINGTON. You mean unless it was a speculation. Anyone, who bought it, unless it was for a specific purpose, would not buy it for anything but speculation.

A. I think from \$30 to \$40 per foot could be obtained for that property at auction.

The CHAIRMAN. A witness came before this committee and testified that he had heard that the owner refused \$77 a foot for it within a very short time; do you know of any such thing?

A. I do not.

Q. (By the CHAIRMAN.) When you say that property won't pay over a certain return, say, 6 per cent, I understood you to make the calculation—correct me if I am wrong—that the net income from the property, after deducting expenses, should be divided into the cost to ascertain the rate, and that at the prices property was held there on F street

the interest on the investment would be very small?—A. In many cases very small.

Q. Do you ignore in your calculation all future growth of the property as a part of your compensation in the way of interest, is not that a matter to be considered?—A. A man buying property generally takes into consideration the question of the possibility of future growth. I think, at the present time, F street has reached about the highest prices it will ever see, that is to say, in this generation.

Q. You think Washington won't grow much more then.—A. I did not say that I did not think it would grow; it certainly will grow, and business will go from F street to probably many other streets, and the property probably decrease instead of increase.

Q. How many customers must you find for a piece of property to establish a market price for it; more than one?—A. I would say most decidedly more than one. As illustrated a moment ago, some particular individual might want a piece of property and would give almost any fancy price for it, whereas to establish an actual value you might have to find a good many people and ascertain what they would be willing to give.

Q. Then you think a market price would be what a good many people would be willing to give?—A. I think so, at auction sales.

Q. Then one man couldn't make a price?—A. Yes, but you must test the value; you have not many people who will bid up to what this particular party will give for it. I do not think many people would follow in the footsteps of Mr. Strong and give \$65 for the corner of Eleventh and F streets. I think that is purely a fancy value; I do not think you would find another man in the District who would give that.

Q. And it is necessary, you think, to find another man before you establish that as a market price?—A. I do.

Q. (By Mr. WASHINGTON.) You were speaking about inadequate assessments, and, as you did not cite any particular instance, I thought I would bring one or two instances to your notice. Do you know what that corner is assessed at—the land value—where your bank is?—A. No; I can not say that I do.

Q. I do not mean now, but under the old assessment.—A. I do not either. I think it was assessed somewhere in the neighborhood of \$5 per square foot.

Q. That is on the corner of —A. [Interrupting.] Fifteenth street and Pennsylvania avenue.

Q. How many lots?—A. Several.

Q. Was that land assessed at \$9 per foot three years ago?—A. Yes; that was a fair assessment for it three years ago.

Q. What do you think it is worth now? I do not mean what it will pay the interest on at present, because you have no building on it to rent; what is the value of it?

The WITNESS. Of that particular piece of ground?

Mr. WASHINGTON. Yes.

A. It would probably sell without any difficulty at \$50 a square foot.

Q. At auction?—A. Yes, sir; it is 58x61 feet. Yes; it would sell for that.

Q. Now, diagonally across, at the intersection of Fifteenth and New York avenue, there is another bank building, a brown-stone structure. Have you any idea of the value of the ground there?

The WITNESS. Do you mean the assessed value?

Mr. WASHINGTON. No; the real value.

A. Well, it is impossible to determine the value of that property accurately, but it is worth anywhere from \$40 to \$60 per square foot and would probably sell for more.

Q. You leave a big margin?

The WITNESS. Those are the most thoroughly fancy pieces of property probably in the whole District of Columbia, and the valuation of that property would depend entirely upon the character of business you wanted to conduct there. As an investment it would not be worth any such sum; it would not yield an income, but at the same time there are various classes of business that might render it profitable at such a price.

Q. Now, you speak of the inequality of assessments. This piece of property, which was assessed at \$9 three years ago, you think would be worth now——

The WITNESS. Anywhere from \$40 to \$60 a foot.

Q. That is a very great difference in three years. You do not think that equality, do you?—A. No property has been put to the test. No property has been sold around there at anything like the figure I have mentioned. To give an illustration right on the same block, this piece of property here [indicating], as I understand it, belongs to the German legation. There have been two or three agents given it for sale at \$15 a square foot, and they are endeavoring to sell it. It is just above our corner there.

Q. It is way up above Mr. Corcoran's buildings, and there is a vacant lot in there.

The WITNESS. All that belongs to the Corcoran estate [indicating].

Q. That is the middle of the square, just opposite Welcker's?—A. Yes, sir.

Q. Do you think it would be equality of assessment to assess a piece of property on Capitol Hill, or anywhere else in the town, for \$2 a square foot that would sell perhaps for \$3 a square foot, and then assess a piece of banking property like that, worth \$50 a foot at \$9 a foot? That is not equality of assessment.—A. Oh, no.

Q. (By the CHAIRMAN.) This thing has existed in this District?—A. Yes; to some extent, and it will in all assessments, I do not care what kind of assessments you make.

Q. (By Mr. WASHINGTON.) If on investigation we develop the fact that inequality does exist to a very great extent, do you not think we are doing the public a service if we correct it?—A. I think that the assessments ought to be on an equal basis all over the District; there ought to be uniformity. There is but one opinion on that point.

Q. (By Mr. WARNER.) Do you know of anybody who objects to anything like that?—A. I do not. I think that if the assessments in one section of the city are at two-thirds of the value, they ought to be so in other sections. There should be no inequality in assessments that could possibly be avoided. There is a great difference in value.

Q. (By Mr. WASHINGTON.) You are a practical business man, and a very successful one. Can you suggest to us a method by which we can attain this equality and justice?—A. None in the world, except to appoint absolutely honest assessors, who will do their duty thoroughly. You have to trust to human judgment in matters of this kind; that is the only way of arriving at it. I approve of the establishment of a permanent board of assessors, and the payment of adequate salaries. The assessors have never been given the necessary time to go over this District; it has always been done in a hurry, and often the persons selected are unfit for the duties imposed upon them.

Q. (By the CHAIRMAN.) Do you think it is a good plan to assess property behind closed doors without consulting anybody as to values?—A. As I understand it, the assessors make these assessments, and then they are open to the public; any man who desires can come down and make complaint. If there are inequalities they can have them corrected. If the assessors undertook to assess the property in this District in the time that Congress usually gives them with open doors they would never get through with a single block of it. The time is totally inadequate.

Q. The answer to my question, then, is, that it is a wise way to make the assessments behind closed doors?—A. I do not answer that question in the affirmative at all. That is a matter that the public should know all about, a question how it can best be arrived at.

Q. Do you know that that is the practice of the present board of assessors, to keep secret what they are doing, and that their claim is that they consult no one; simply the three men get together and out of their own minds assess all the property and assume to get all the facts? Are you familiar with that fact?—A. I am not; but I know this, that if those gentlemen were compelled to assess the property in this District with open doors, it would be an utter impossibility to make the assessment within the time that is allowed them.

Q. Then, they have a still shorter time to make the equalization when the doors are opened?—A. Yes; I do not know what the time is; I think the method of assessing values in the District is greatly defective; I think it could be greatly improved.

Q. I would be glad to have any suggestion you may be able to make on that subject.

The WITNESS. Mr. Chairman, I came up here unprepared to say anything. I could hardly go into a question of taxation.

Mr. WARNER. If you think of anything to suggest to the committee they will be glad to have it.

Q. (By Mr. WARNER.) Mr. Glover, you say that you have noticed irregularity in assessments. Has this, to any extent, been brought about by special advances in property in any particular neighborhood or locality?—A. Yes, in some cases; but in many instances the assessments originally were at a very inadequate figure.

Q. Have improvements been favored more than the ground itself?—A. I think not.

Q. You think there is no discrimination between ground and improvements?—A. I do not; not as far as my knowledge goes.

Q. During what time has the very large increase of values in the District taken place as a rule; what period?—A. In the last ten years; more particularly in the past two, three, or four years, the increase has been phenomenal, especially in the central portion of the city.

Q. What effect have the assessments in the District had upon prospective purchasers, do you think; have they had any effect in inducing purchasers, and the location of capital here?—A. I think the comparatively low rates of assessments in the District have induced an immense amount of capital to come here, and tended to increase the value of property.

Q. Do you think you could form any conclusion as to the general value of property by the rapid increase in the value of special pieces; would the price paid for the property at the corner of Eleventh and F streets, by Mr. Strong, be a basis for fixing the value of property adjoining?—A. I should say not; I think it is too far beyond the actual value.

Q. I would like to ask you if you are interested in F street property?—A. I am not.

Q. (By the CHAIRMAN.) You spoke of some property on F street that you sold; will you tell us what you sold it for?—A. I have not the slightest objection. I told you what the property cost me; the building cost me \$60,000 to erect, and the ground, \$16,000. I sold it for \$115,000.

Q. How did you estimate that value, that \$115,000?—A. At just exactly what it cost me.

Q. What was that?—A. \$60,000.

Q. How many square feet were there?—A. 3,400.

Q. That was about \$16 a square foot; when was that sold?—A. I think about three years ago.

Q. Please describe the lot?—A. It is square 224, part of lot 4; the east 30 feet front by the depth of lot 4.

Q. (By Mr. WASHINGTON.) Mr. Warner asked Mr. Glover if he thought the price paid, I believe by a man named Strong, at the corner of Eleventh and F streets, \$65 a square foot, ought to set the value of property in that square. Well, don't you think that where you can get one or more sales in a square that that furnishes a fair criterion to go upon in reaching the value of the balance of the property in the square?—A. I do not think one sale would; several would.

Q. Taking sales that are made under such circumstances as that was, which was considered unusual. As for instance, take your own lot?—A. I sold the lot and those people bought it as an investment.

Q. Take sales that you believe to be bona fide sales and where no outside considerations enter into them, and under ordinary circumstances, you think that even if there is only one sale made it would go a long way to helping a man to arrive at the value?—A. Unquestionably, unless it is a fancy sale, the property bought for a particular purpose.

Q. (By Mr. WARNER.) Should the sale of any corner lot be taken as the basis for interior lots?—A. No, sir.

Q. Are not corner lots very much more valuable than interior lots?—A. They sell at a very much larger rate per square foot than interior lots.

Q. I would like to ask you if you know the assessors, the members of the present board?—A. I do; I know two of them.

Q. What is your opinion as to their standing and reliability?—A. They are thoroughly correct, honest, reliable men. I think the standing of those gentlemen is generally so considered in this District.

Mr. WASHINGTON. I would suggest, Mr. Chairman, that there is no question here as to the character or standing of those gentlemen.

Q. (By the CHAIRMAN.) They are pretty well-to-do men, are they not?—A. They are all men of high standing and character.

Q. That property of yours that was sold three years ago at \$16 a square foot, on F street, was assessed at \$5?—A. Yes; that is exactly right.

Q. Was that favoritism at that time?—A. No, sir; I never went to the office of the assessors in respect of any piece of property.

The CHAIRMAN. I do not charge any collusion or anything unfair, but I simply want to know your opinion, the property being sold at that time at \$16 and being assessed at \$5.

The WITNESS. Understand that the improvements went with that property; it was not the sale of the ground at \$16 a foot; I gave you the exact cost of the ground and the building.

The CHAIRMAN. We deducted that.

The WITNESS. That makes the property seemingly sell for \$16 a foot, but I want to say this with respect to that building that it was built in very cheap times.

Q. How old was it?—A. It was finished in 1884.

Q. But buildings generally deteriorate a little, you know?—A. I know, but the cost of building was vastly less at that time, and if you undertook to construct the same building to-day you could not do it, probably, under \$75,000 or \$80,000, the cost of material and labor is higher.

Q. It is an assessment of one-third?—A. You put it that way; it was inadequate, it should have been assessed at more.

Q. Or else all property in the District should have been assessed at one-third to be fair?—A. Yes, sir.

Q. In your judgment property in the District is not assessed at more than one-third of its value?—A. Yes, there is no question about that.

Q. Yet, in that case we see it was not?—A. Yes, sir.

TESTIMONY OF CHARLES H. CRAGIN.

CHARLES H. CRAGIN, having been duly subpoenaed at the request of Mr. B. H. Warner and sworn by the chairman, testified as follows:

By Mr. WARNER:

Q. Please state your occupation.—A. I am engaged in the practice of law.

Q. Have you had any experience in dealing with real estate, individually or as trustee, and, if so, to what extent?—A. Only to this extent, that I have noticed the prices brought on real estate under sales by order of the court or foreclosure of mortgages.

Q. Have you made any sales during the past ten years as trustee?—A. A great many of them.

Q. You are somewhat familiar with the value of property here, are you not?—A. Generally, yes; although I have not in mind any particular piece of property.

Q. I am speaking in a general way. Has there been any favoritism shown to any particular section, to your knowledge, as regards values for taxation heretofore?—A. Well, I am not as familiar with F street property as you or Mr. Glover, but I have sold property in the neighborhood of F street.

Q. I am not speaking of F street particularly.—A. I understand; I have also bought property in East Washington and Georgetown, and it would seem to me that the assessment of property in those sections, the poorer sections, is smaller in proportion to the value than assessments near F street. For example, I have seen property assessed at \$300 in Georgetown that would sell for in the neighborhood of \$1,000 in a poor section of the town.

Q. Are you speaking of the ground itself?—A. The whole property, ground and improvements. I can not mention any particular piece, but out of six or eight sales that I made in Georgetown in the poorer section of the town, they have brought from two to five times what the property was assessed at.

Q. (By the CHAIRMAN.) You can not name the pieces?—A. No, sir; I did not get the subpoena in time to make any reference to the matter.

Q. Will you furnish the information in regard to that particular piece

that was assessed at \$300 and sold for \$1,000?—A. Yes, sir; I will do it by letter. Then, in East Capitol property, I have frequently loaned twice what the property was assessed at, showing what I regarded it as worth.

Q. That is on the assessment of three years ago?—A. Yes; I do not know anything about the present assessment.

Q. (By Mr. WARNER). You are speaking of East Washington?—A. Yes, sir.

Q. Where, in your opinion, has the advancement been most rapid in the last five years; I am speaking of property within the city limits?—A. I have no doubt F and G streets, and the streets that run north and south from it.

Q. What other streets; residence streets, particularly?—A. All the northwest has advanced. I would not say it had advanced more rapidly if you judge from the selling price of real estate, but it has advanced more rapidly than a good many residence sections, or Georgetown and East Washington.

Q. Where has the most building been done in the last five years of moderate-priced houses; say houses from \$2,000 to \$3,500?—A. The eastern section of the city.

Q. According to your observation, how have the assessments been in East Washington?—A. I would say at least one-half of what the property is worth, to be very moderate.

Q. Well, have they been low or high?—A. Low.

Q. (By the CHAIRMAN.) Low by comparison to that at which other property is assessed?—A. Low compared to what it sells for.

Q. (By Mr. WARNER.) In comparison to the market value, you mean?—A. Yes, sir.

Q. (By the CHAIRMAN.) And that was lower than business property in the center of the city; that is, if it was assessed at 50 per cent of its market value on Capitol Hill, the assessed value in the business part of the city was, according to your statement, higher than 50 per cent?—A. I am speaking of actual sales, what property may be held at, whether they made bona fide offers I do not know. But take an actual sale of property in East Washington, my experience has been, under the circumstances, that it brought more in proportion to the assessed valuation than high-priced business property. For example, if a piece of business property was assessed at \$50,000, you would not be surprised at its selling for \$150,000, whereas a piece of property in a poorer section assessed at \$300 would sell for \$1,000.

Q. Take the piece of property that was sold recently for \$60 a foot, Eleventh and F streets; do you know what that was assessed at?—A. I have no idea.

Q. Will you please look at the plat book and tell us what it was assessed at? It is lot 1, square 320.—A. (Examining book.) Six dollars a square foot.

Q. That is one-tenth of what it sold for?—A. The sales that I refer to were sales made at public auction.

Q. You know of no sales at public auction that brought relatively more than ten times the assessed value?—A. No, sir.

Q. As this case that you speak of did bring?—A. No, sir. That was a private sale and for a particular purpose.

Q. (By Mr. WARNER.) Is that not a very unusual case?—A. Very.

Q. Ought judgment of any kind to be fixed by a sale of that character?—A. I doubt if you could get anything like what he paid for

that property. I think it is the general opinion of the people of the District that he paid entirely too much.

Q. (By the CHAIRMAN.) How much do you think that property is worth?—A. I am not a real-estate agent, and really I would not like to fix a value on it. I only think that that is too high for it.

Q. Does it not require the same character of knowledge to know that it is too high as to know what it would be fairly worth, and unless you know one can you know the other?—A. I am judging from the comment of the District.

Q. What is the comment that you heard; how much did you hear?—A. I did not hear any particular figures, it is the impression created in one's mind.

Q. You are an attorney?—A. Yes, sir.

Q. You are familiar with the laws governing assessments in the District of Columbia?—A. Well, I can not say that I am familiar with it; I understand about what it is.

Q. Do you know what the assessors are required to ascertain?—A. I have not had occasion to refer to the law; I have only seen it in the newspapers.

Q. Do you recall at all the language?—A. I do not, but they are required to inspect each piece of property and ascertain its true market value.

Q. The language of the law, I will correct you, is the true value in lawful money. What would you interpret that to mean?—A. What it would bring, not adapted for a particular purpose, but under any circumstances; what a man could at any time realize on that property.

Q. Do you mean at the most unfavorable time?—A. Yes, sir.

Q. Then you think the true value in lawful money of a piece of property would be what it would bring under adverse circumstances?—A. I think that would be a true criterion for assessment.

Q. As an attorney?—A. Yes, sir.

Q. Do you know of any Supreme Court decisions on that point?—A. No, sir; I am only giving you my individual opinion on that.

Q. (By Mr. WARNER.) I would like to ask if you know the present board of assessors?—A. I know two of the gentlemen, Mr. Cook and Mr. Moore.

Q. (By Mr. WARNER.) What is your opinion of their judgment and their qualifications for the positions they occupy?—A. I think they are in every way qualified; they are thoroughly honorable men.

TESTIMONY OF GEORGE TRUESDELL.

GEORGE TRUESDELL, having been duly subpoenaed, at the request of Mr. Warner, was sworn by the chairman and testified as follows:

By Mr. WARNER:

Q. Mr. Truesdell, to what extent have you dealt in real estate in the District of Columbia within the past ten years?—A. I have had considerable dealings in real estate, principally in suburban property though.

Q. What is your acquaintance with the values of property in the District of Columbia?—A. Well, I have had special acquaintance in those localities where I have been operating, and general information derived from sales reported in the papers, and such sales as have come under my personal observation.

Q. Where have you operated most largely in real estate; in what sections?—A. Immediately north of Boundary street and between Brentwood road and Rock Creek.

Q. Can you give us your idea of the rise of property in those different localities, the advance of property?—A. There has been a very great rise of suburban property, and also in city property in certain localities.

Q. Well, take for instance Eckington; you paid how much per acre for that property?—A. About \$600 per acre.

Q. What is the highest rate per acre at which you sold that property, turning square feet into acreage?

A. About \$21,000 or \$22,000.

Q. (By the CHAIRMAN.) What is that property assessed at?—A. I really cannot tell you; it is not assessed at anything like that.

Q. Is it assessed at anything like \$600?—A. Oh, yes; my recollection is that it runs about 10 cents a foot, possibly in some cases less than that.

Q. (By Mr. WARNER.) About \$4,000?

The CHAIRMAN. That is \$4,000 per acre?

A. Yes, sir; the assessment varies considerably; some portions of it I think are less, but perhaps not more than 5 cents a foot.

Q. (By the CHAIRMAN.) About \$2,000 an acre is the lowest assessed value?—A. To the best of my recollection, yes.

Q. And about \$21,000 an acre is what it is selling at? When did you buy this property at \$600 an acre?—A. About five years ago.

Q. Do you remember what it was assessed at then by the acre?—A. I do not, but I remember it was a very small sum.

Q. Less than \$100 an acre?—A. I think that probably it was about \$100 an acre.

Q. That is a very great inequality between the assessed value and the true value?—A. Yes, sir.

Q. And that existed in both of those assessments, both the last one and the one preceding?—A. Yes, sir.

Q. You do not know what it is now?—A. The present assessment I have not heard.

Q. It is worth about \$21,000 or \$22,000 now.

Mr. WARNER. I beg your pardon; that is the highest price that it has ever been bought for.

Q. Will you please locate some of that property?

The WITNESS. That portion along the streets that have been asphalted.

Q. Name the streets?—A. R street, Third street, Second street, and Fourth street.

Q. Near the intersection of those streets?—A. Yes, sir.

Q. (By Mr. WASHINGTON.) The streets run the same as in the city?—A. Yes, sir.

Mr. WARNER. What has brought about this enhanced value?

A. The improvements that I have put there in the way of asphalt pavement, sidewalks, sewage, electric-light plants, water, and the electric railway.

Mr. WASHINGTON. Overhead wire electric railroad system has had more to do with it than anything else?

A. Yes, sir.

Q. (By the CHAIRMAN.) Who paid for the improvements?—A. I paid for them myself entirely, with the exception of two squares, which were done under the permit system.

Q. About how much per acre did the improvements cost you?—A.

There were about 100 acres in the tract, and I think the improvements have run between \$400 and \$500 for each lot.

Q. Which would be between \$3,000 and \$4,000 an acre?—A. Yes, sir.

Q. (By Mr. WARNER.) This enhancement in value has been largely brought about, then, owing to your management, and the investment of your means in houses and other improvements?—A. Almost entirely. Of course, I suppose there has been some increase in value there as elsewhere out of a sympathy with the general advance in property everywhere, but the principal cause, of course, has been the improvements. It was a rough and inaccessible piece of property when I bought it; it had a frontage on Boundary street of 99 feet, and ran back, widening as it went along. In order to make it valuable I had to buy ground between that and Lincoln avenue, North Capitol street. The increase there has been very large, and it has been due almost entirely to the causes I have named, buying intervening property and asphaltting between, so as to make it practically city property, which it now is.

Q. (By the CHAIRMAN.) Let me ask you a question right there. The thing that brings about increases in land values is the extent of the improvements, such as buildings, rapid transit, and improvement of streets, and all those things under the general head of improvements?—A. Yes, sir.

Q. And the more the improvements the more they will increase the land value?—A. Undoubtedly.

Q. That is assuming, of course, that there is a population close by that can be carried in that direction?—A. Yes, sir.

Q. And the population and improvements combined make land values?—A. Yes, sir; population and accessibility to the city.

Q. Neither one without the other would make land values?—A. No, sir.

Q. In the absence of population would land values go up, no matter how much you improved it?—A. Well, valuable improvements would tend to increase valuation, because sooner or later it would bring population.

Q. But until it brought population it could not?—A. Yes, the population would be anticipated to some extent. When ground like that, for instance, which was perhaps as uninviting when I bought it as any piece of property in the city of Washington, when it was improved, the streets paved, sidewalks laid, sewers built, water provided, lights, and transportation, there was still no population; but there was a large increase in value immediately. I sold property which cost me \$600 an acre at as high as 25 cents a foot before these improvements were completed, and before there was any population there; that was in anticipation of population, because the ground improved in that way, and was accessible and near the city, and that must invite population in a very short time.

Q. Then my proposition is true, that the entire absence of population there in the vicinity on the ground would destroy that?—A. To a very great extent.

Q. (By Mr. WARNER.) I think I asked you if you were acquainted with the tax assessors?—A. I know two of them.

Q. What is your judgment regarding their opinions; are they fitted for the position?—A. They are men of high character and well qualified to fulfill the duties of their office.

Q. Do you know of any favoritism being shown to anybody by them?—A. I have never heard anything of their doings.

Q. (By the CHAIRMAN.) Therefore you do not know?—A. No, sir; I do not know.

Q. (By Mr. WARNER.) You also own property in the northwestern section, do you not?—A. That is on the border of the northwestern section of the city and some in the city.

Q. You have expended large sums in improving this property, have you not?—A. Yes, sir.

Q. You have had occasion to notice the difference in the assessments between the property in the northeast and northwest sections. What is your opinion regarding their equality and inequality?—A. Well, I think there has been very great inequality in all sections. It is difficult to say that there has been greater inequality in one section than in another. The inequality in assessments has been due very largely to rapid increase in property for special reasons. A street, for instance, suddenly becoming a business street that was before a residence street, values increase rapidly.

Q. (By the CHAIRMAN.) For instance, what street?—A. F street and G street, then a street like New York avenue, or in the vicinity of New York avenue and North Capitol street, where property was worth 25 and 35 cents a foot four years ago is held now at from \$1 to \$1.50.

Q. You think the greatest inequality exists in the places where the most rapid change takes place?—A. So far as my observation goes, yes.

Q. (By Mr. WARNER.) Col. Truesdell, would not the equalization or the question of inequality be naturally settled when values ceased to vibrate as they have done or ceased to advance as rapidly as they have done?—A. It would, if the property was uniformly assessed; assessed with the same standard of value, having the same proportion to its market value.

Q. (By the CHAIRMAN.) Is it dishonest to assess any one piece of property at 25 per cent of its true value and another at 80 per cent?—A. It is wrong. I do not mean to be understood as saying that the rapid increase in values on certain streets or in certain sections has accounted for all the inequality. I think the inequalities have existed outside of that. The assessments have been made by incompetent men, and I think the law has been bad heretofore. The present law, I understand, will remedy that.

Q. But you do not know that it has?—A. No, sir; I have no knowledge whatever on the subject.

Q. And you could not well judge until you passed upon the result of their work, could you?—A. No, sir; except I would expect from the character of these men and the time they have to devote to it, and from the law under which they are operating, that they would make a uniform assessment, but I do not know whether they have or not.

TESTIMONY OF THOMAS DOWLING.

THOMAS DOWLING, having been duly subpoenaed, at the request of Mr. Warner, was sworn by the chairman and testified as follows:

By Mr. WARNER:

Q. Mr. Dowling, please state the length of time during which you have been engaged in selling real estate in the District of Columbia?—A. About thirty years.

Q. Have you a general acquaintance with the values of real estate throughout the District?—A. A great deal of it.

Q. Have you a general acquaintance with the assessments?—A. I have not.

Q. You have made some observation regarding the assessments in this District, have you not?—A. Very little.

Q. You have real estate in the District, have you not?—A. I have.

Q. Where is it situated?—A. In Washington and Georgetown.

Q. Have you heard a number of complaints, or any complaint, regarding the inequality of assessments in the District of Columbia.—A. I have not; I have paid no attention to it.

Q. The property that you sell at auction, does it generally bring more than the assessment or less?—A. That is one of the things that I have paid no attention to. I generally take my own judgment.

Q. I understand that; but, as a matter of fact, does the property you sell at auction bring more or less than the assessment?—A. More.

Q. You would expect it to bring a good deal more, would you not?—A. Yes, sir.

Q. (By the CHAIRMAN.) You say you do not generally pay much attention to it?—A. No, sir; I do not.

Q. (By Mr. WARNER.) Do not the purchasers pay a good deal of attention to it?—A. The purchasers do.

Q. Does not the amount of tax paid upon a piece of property have an effect upon the minds of investors when they are thinking about purchasing?—A. I think there are but few who think about taxes when they buy.

Q. You do not think that they have much idea about taxes?—A. No, sir; I do not believe they think about that; they buy property at what they think it is worth.

Q. Do you sell mostly to parties who are buying for investment, or who want to secure homes?—A. Both, but mostly for investment now.

Q. Now, what is your impression about assessments here, as gained from experience?—A. If you can name any special piece of property and tell what it is assessed at I could probably tell you.

Q. I mean are they high or low?—A. I think they are about fair.

Q. Do you know of any inequality in assessments?—A. I do not.

Q. Do you know of any favoritism having been shown?—A. No.

Q. Do you know the assessors here now?—A. I do.

Q. What is your opinion of them?—A. I know two of them personally.

Q. What is your opinion of them as property holders and citizens?—A. I do not think there could be better men anywhere.

Q. (By Mr. WASHINGTON.) Have you ever looked into the question at all to see whether or not there are any inequalities in the assessments?—A. I have not.

Q. You never studied that question with a view of trying to find out if there were inequalities?—A. No, sir.

Q. (By the CHAIRMAN.) Then you do not know much about that?—A. I do not.

Q. Then, when you say that there are no inequalities you are talking about something that you do not know about?—A. I do not, because I have not paid attention to that branch.

Q. And your judgment, of course, is not good as to whether there is any inequality or not?—A. It is not.

Q. (By Mr. WARNER.) As a matter of fact, have you not done a very large auction business in the last twenty years?—A. I have.

Q. And would not your opportunities for observing any inequalities in the assessments be better than those of the average man?—A. Pro-

vided I had paid attention to the matter, but I never did; that has been a line I never have paid attention to. When my tax bills have come in I have paid them, and I never raised any objection.

Q. I am speaking with reference to the property you sell?—A. I understand.

Q. Where have the improvements during the past five years been most rapid, in small dwellings, houses erected at from \$2,500 to \$4,000?—

A. I think in the northeastern section.

Q. What business streets have improved most rapidly within the past five years?—A. F and G streets.

Q. Has there been any unusual cause for the improvement of F street, any large buildings erected that have given it an unusual advance in property?—A. I think the business has gone up there considerably because large buildings have been put up there that made the property more valuable.

Q. What has attracted buildings to F street and given it its unusual growth?—A. I can not say what that is, except the street facilities, it being a good street.

Q. What effect do you suppose the erection of the Glover building, of the Kellog building, of the Sun building, of the Adams building, of Woodward & Lothrop's building, and of the Washington Loan and Trust building had upon F street within a short space of time; have they produced any unusual effect?—A. They have.

Q. Would not that effect be so unusual as to attract your attention?—A. That did attract my attention, so far as that is concerned.

Q. Would it not produce an extraordinary condition of things as to values? Would not the erection of so many buildings on any one street at so many places produce an extraordinary condition of things?—A. I think it would.

Q. Would it not produce in the minds of the public a valuation of their property unwarranted by the usual condition of the market?—A. I think it would.

Q. Do you suppose that the improvement of any other street in Washington by the erection of a similar number of buildings would have any effect in attracting public attention and the confidence of investors away from F street?—A. I do not know. I think it would improve that locality, but I do not know that it would draw away from F street.

Q. Have you been familiar with the condition of Pennsylvania avenue within the past twenty years?—A. I have.

Q. Have values changed much on that street?—A. They have not within the past twenty years, according to my opinion.

Q. Are you familiar with Seventh street, between B and G streets NW.?—A. I am.

Q. Have values changed unusually there during the past twenty years?—A. I do not think they have.

Q. Would not, in your opinion, the erection of Government buildings or any large edifices on the south side of Pennsylvania avenue, between the Capitol and the Treasury Department, have the effect of enhancing the value of property on the north side of that avenue and of drawing attention away from other business streets?—A. I have my doubts very much about that. I do not think Seventh street, between E and F streets, is as good as other parts, on account of the large buildings that take up the whole square.

Q. What effect, if any, had the erection of the Washington Safe Deposit building on the south side of Pennsylvania avenue—on the south

side between Ninth and Tenth streets—upon property adjacent in the same square?—A. I do not know that that improves it a great deal, except for the fine building. I do not think it helps business much.

Q. Did you make sales for the estate of Randall?—A. No, sir.

Q. Do you remember the sale of a piece of property owned by Henry Bergman, and which is now owned by the Washington Safe Deposit Company, about twenty years ago?—A. I do not think I made that; but I may have done it.

Q. In which Judge Hagner was interested?—A. I do not think I made that.

Q. Do you not know as a matter of fact that within a few years property has improved in value on the south side of Pennsylvania avenue?—A. It has.

Q. As a matter of fact, since the project was originated, or since the Government bought property for the general Post-Office properties on the south side of the avenue, has there not been an increase in the value of property?—A. Holders are holding them for more money.

Q. (By the CHAIRMAN.) How much?—A. I suppose they now hold it from \$10 to \$15 a foot.

Q. What was it worth before?—A. Five dollars.

Q. What did the Government pay for that?—A. I think about, on an average, \$11 a foot.

Q. The \$5 property?—Some is worth not that much and some is worth more.

Q. And had not it the effect to raise the value of the balance of the land?—A. Yes, sir.

Q. (By Mr. WARNER.) Was not the larger part of this property taken from parties who were not willing to sell, or were not anxious?—A. I think very few in that square cared about selling.

Q. It was taken under condemnation proceedings, was it not?—A. Yes, sir.

Q. (By Mr. WASHINGTON.) Do you think if a private purchaser had come along at that time and offered \$9 or \$10 a foot that they would have refused to sell?—A. I certainly think Mrs. Stone would have refused to sell, and the ice company.

Q. That was for some private reason, was it not?—A. I do not know.

Q. They would not have refused to sell because they did not think the property was worth more than it had been up to that time?—A. I do not know; I do not think anybody on that square would have sold.

Q. Then, the Government ought to have bought the property where the people wanted to sell.

Mr. WARNER. You can not find such people, they do not get together in one square.

Q. (By the CHAIRMAN.) Are you familiar with the valuation along F street?—A. I think I am.

Q. What is the Washington Loan and Trust Company's building worth?—A. I think to-day about \$40 a foot.

Q. What do you think the property along that square, No. 377, up nearly to the next corner toward Tenth street would bring?—A. About \$25.

Q. And what the corner of the next square bring, the southwest corner of Tenth and F streets?—A. I should think that is worth, probably, \$30 or \$35.

Q. What do you think the Masonic building property worth?—A. They held that at \$40 a foot at one time; I do not know that they would take that now.

Q. You think it would take more money to buy that now?—A. I think so.

Q. What do you think the buildings on the square just west of the Masonic building property worth?—A. That is worth from \$25 to \$30 a foot.

Q. And what is the corner, the northeast corner of Tenth and F streets worth?

Mr. WARNER. That is Holtzman's.

A. That is not worth less than \$30 or \$35 a foot.

Q. What do you think property on the northwest corner of Eleventh and F worth?—A. I would not value that at more than \$40.

Q. The CHAIRMAN. Which is the most valuable corner on F street between Ninth and Fifteenth streets?—A. I think Ninth, Tenth, Eleventh, and Twelfth; I think probably Ninth street now has the advantage, but there is not much difference.

Q. Do you know the property that was sold at Eleventh and F streets to Henry Strong, at \$60 per square foot?—A. I do.

Q. What do you think it is worth?—A. About \$40.

Q. Do you think they paid 50 per cent more than it was worth?—A. If they paid \$60 for it, I think it was more than it was worth.

Q. Do you know of a piece of property that was sold on F street to Metzerott?—A. Yes, sir; I understood that it sold for \$35.

Q. Do you think it worth that?—A. No, sir.

Q. What is it worth?—Not over \$25 or \$30.

Q. They paid probably \$5 too much, then?—A. That is my judgment.

Q. How much ought property worth \$35 a square foot to be assessed at in your judgment?—A. If it would bring it it ought to be assessed at two-thirds of its value.

Q. Why do you say that?—A. I do not think it ought to be assessed at its full value.

Q. The law says it must be assessed at its full value. If you were an assessor what would you assess it at?—A. I do not think I would assess it at \$40.

Q. If its true value was \$40, you would not assess it at that?—A. What it would bring under forced or adverse circumstances.

Q. Why do you say that; do you know of any authority of law requiring assessment under such circumstances?—A. I do not.

Q. You think that is a custom?—A. In my judgment that is a custom?

Q. If they take two-thirds all over the city it would be fair to all?—A. Yes, sir.

Q. If they take two-thirds in some places and one-fourth in others, what would that be?—A. That would not be fair.

Q. (By Mr. WARNER). If any such inequality existed would it or would it not, in your judgment, be the result of a want of judgment on the part of the assessors rather than any intention to do wrong?—A. A want of judgment, I think.

Q. Do you think that three men of superior judgment would be liable to be selected in the District of Columbia to make assessments to those now serving?—A. I think they could not be had. I do not think three better men could be had; I only know two of them, Mr. Moore and Mr. Cook.

Q. What business are they engaged in?—A. Mr. Moore was in the agricultural business; Mr. Cook was formerly collector of taxes.

Q. About what salary would they command under ordinary circum-

stances?—A. I should think their salary would be from \$2,500 to \$4,000 a year.

Q. Do you think they could make more in their legitimate business than that?—A. I think Mr. Moore made more than that.

Q. You think that is a very small salary?—A. Yes, sir.

Q. Why do you suppose they took that position?—A. I do not know but one reason, probably two reasons. Mr. Cook had lost his position, and I think Mr. Moore was about retiring from business.

Q. (By Mr. WARNER.) As a matter of fact, had he not retired from business?—A. I believe he had.

Q. (By the CHAIRMAN.) What is the other reason?—A. That is all.

Q. (By Mr. WARNER.) You stated a moment ago, without apparently much thought, that you considered property on F street between Ninth and Tenth streets, interior property, worth, on the average, \$25 a foot, and that you considered corner property worth \$40 a foot. Have you reflected as to that?

The WITNESS. Let me finish, please.

Mr. WARNER. I want to get at your meaning.

The WITNESS. Now, there is property on F street, I understand to-day that can be bought for \$20 a foot—F street between Eleventh and Twelfth streets.

Q. (By Mr. WARNER.) What depth?

A. About 108 feet, as I understand it.

Q. Do you think that property worth \$20 a foot?—A. I think if any property on F street is worth it, it is that.

Q. That brings a building lot, then, at about a valuation of \$22,000?—A. Yes, sir.

Q. Do you think that there is any building, on F street, 20 feet front by 108 feet deep, not a corner lot, between Ninth and Thirteenth, worth \$30 a foot for ordinary purposes?—A. I do not say that it is; I think it would bring that, but whether the parties could make it pay I do not know.

Q. Do you think you could get that at auction for it to-day?—A. I think it would bring in the neighborhood of \$20.

Q. Do you think you could get at auction for property on F street, 25 by 104 feet to an alley, \$25 a foot?—A. That is a very cheap lot; I do.

Q. I understood you to say that you can not get that value, \$25 a foot?

The WITNESS. What depth?

Mr. WARNER. Say 25 by 100 feet, \$25 a square foot.

A. I think it would bring \$25.

Mr. WARNER. That is \$62,500 for a lot 25 by 100 feet?

A. Yes, sir.

Q. Do you think there is any lot on F street that would bring that?—A. I do.

Q. Except a corner lot?—A. Yes.

Q. Do you know of any?—A. I do not.

Q. Do you know of any property selling at that price?—A. The last property I heard, sold at \$18, up between Thirteenth and Fourteenth streets; that was a big lot; it was within the last year.

Q. What sale was that?—A. Next to the Kellogg building.

Q. (By the CHAIRMAN.) Do you know of any price refused for property on F street?—A. I do not.

Q. (By Mr. WARNER.) Do you think, Mr. Dowling, that there is any business transacted in the District of Columbia of sufficient magnitude, except in perhaps two or three cases, that would warrant the payment

of \$20 a square foot for property, say for a lot 25 by 100 square feet?—A. I do not see any business that can do it.

Q. Do you think the valuation you placed upon it is warranted by the business interests of the District of Columbia, or is it, in your opinion, artificial?—A. It seems to me it is an artificial valuation.

Q. What influence would a tight money market, not a panic, have upon values of this artificial character of which we have spoken?—A. I should say it would have a serious effect.

Q. What is the lowest price you have known property to sell at on F street within ten years?—A. The lowest-priced property I sold myself, the Glover building, I think; that was sold probably ten or twelve years ago.

Q. At what figure?—A. Two dollars and five cents a foot.

Q. (By the CHAIRMAN.) How long ago?—A. I expect that has been twelve or fifteen years ago.

Q. And that property you could sell to-day for what price?—A. I suppose \$35 or \$40 a foot.

Q. (By Mr. WARNER.) Do you know the property that was bought by Mr. Schneider, a bell-hanger, on F street, now occupied by the National Union Fire Insurance Company?—A. I do.

Q. Do you know when Mr. Schneider bought that property?—A. I do not.

Q. Do you know what he received for it?—A. I do not.

Q. Do you not know, as a matter of fact, that that property was sold within the past three years for \$46,000?—A. I do not.

Q. That is about \$11 a square foot. You have heard it stated that the insurance company bought that property?—A. Yes.

Q. Was the purchase considered a desirable one at the time?—A. It was.

Q. Is that lot favorably situated?—A. Very.

Q. Why?—A. It is between Ninth and Tenth, on a car line, and a great deal of business around it.

By Mr. WARNER:

Q. Is it on an alley?—A. Yes.

Q. Would that, in your opinion, make a difference, side light and a lot 154 feet deep?—A. I would rather have it.

Q. What effect would it have on the ordinary purchaser in the erection of a fine building?—A. It would be valuable for a fine building.

Q. What difference would it make?—A. That I could not tell.

TESTIMONY OF A. B. DUVALL.

A. B. DUVALL, having been duly subpoenaed, at the request of Mr. Warner, was sworn by the chairman, and testified as follows:

By Mr. WARNER:

Q. Please state your occupation and how long you have been engaged in it?—A. I am practicing the profession of the law, and have been so engaged for twenty-two years.

Q. Have you had experience in the sale of real estate, either as an individual or as trustee for the court, during that period?—A. I have had some slight experience in selling as trustee under decrees of the court.

Q. Have you had any occasion to notice the valuation of property for

taxation in the District of Columbia?—A. Only casually; I have had no occasion to examine it particularly.

Q. Has it, in your judgment, been high or low?—A. Low, I should think.

Q. How, in your judgment, has the rapid growth of the city affected property, as a rule, in making taxation—the valuation of property regarding taxation?—A. There are certain localities in which property has quite rapidly enhanced in value, and if the assessment remained the same there would be an inadequacy, in those localities, if that is what you mean.

Q. Has the erection of large buildings along the line of certain streets, such as F street, had any particular effect in the enhancement of prices in those localities?—A. Undoubtedly.

Q. Has such advance, in your opinion, been more rapid than was warranted by the demands of business?—A. I am not a real estate broker or real estate operator.

Q. Give your own opinion, as a man of property.—A. I should think that in the case of F street it had.

Q. (By the CHAIRMAN.) What is the best indication of the value of a piece of property on F street?—A. The price that could be obtained for it at a sale.

Q. Under what circumstances?—A. Ordinarily fair circumstances.

Q. (By Mr. WARNER.) In your opinion, can the valuation of property along an entire square be properly made on that basis at which a corner lot sells, or the figure at which a lot sells that is greatly desired for any particular purpose?—A. Of course not.

Q. Do you know of any inequalities that have existed in the assessments in the District of Columbia?—A. I do not know that I can recall any specific instances. I have thought from a casual observation that there were inequalities. The previous assessments for taxation in the District of Columbia were made by a number of individual assessors, and they assessed ground upon their individual notion of value and without any fixed system, so far as I know. The result was that certain localities were assessed on one basis and perhaps other localities on another. There was no general, comprehensive plan of assessment.

Q. (By the CHAIRMAN). Yet there was a uniform law requiring each assessor to take an oath to ascertain the value on some rule, was there not?—A. Yes, sir.

Q. They failed to interpret that law in the same way?—A. Apparently. The present law putting the assessment in the hands of one board and providing a basis of assessment ought at least to give uniformity that did not exist under the previous system.

Q. But you know nothing about the result of this present assessment?—A. No, sir.

Q. Has there been any change in the law as to the basis of assessment; was not the change entirely from a periodical board of twelve under the old law, to a permanent board of three so that the basis is the same?—A. I am not prepared to say; I have not examined it.

Q. Were you under the impression that there was a change in the law other than the change from twelve assessors to three assessors?—A. I was under that impression.

Q. But you are not positive about that?—A. No.

Q. (By Mr. WARNER.) Do you know of any favoritism that has been shown in the making of assessments?—A. None at all.

Q. (By the CHAIRMAN.) Would you know of favoritism if it existed? The WITNESS. Do you mean present or previously?

Mr. WARNER. Previously.

A. No; and I have had occasion under previous assessments to request that the assessment be changed and reduced. I was interested in some property at the corner of Fourth and F streets several years ago under a new assessment within ten or twelve years. The improvements in that block were assessed without any apparent uniformity and I had occasion to apply to have them reduced, the amount of the assessment of the improvements.

The CHAIRMAN. Not the land?

The WITNESS. Not the land.

Q. (By Mr. WARNER.) Do you think that inequality was the result of want of judgment or favoritism?—A. More a want of judgment. There had been some new buildings put up in the square, and I do not remember now whether they had actually increased the assessment of the property I was interested in or whether the new buildings were assessed at a valuation that did not compare with the old.

Q. (By the CHAIRMAN.) As a lawyer, what do you interpret the meaning of the tax law requiring the assessors to ascertain and assess property at its true value in lawful money to be?—A. I should interpret that to mean its cash value under ordinarily favorable circumstances.

Q. True value, you think, means cash value?—A. I would say that the true value in lawful money meant its cash value under ordinarily favorable circumstances. If it was sold on time, its time value could be converted into cash value.

Q. (By Mr. WASHINGTON.) Mr. Duvall, I believe you stated that you had made sale of property very frequently as a trustee under the decrees of the court. Will you give us some idea of the rule of the court ordering sale of property, the terms, etc.?—A. The terms ordinarily are one-third cash, and the balance at six and twelve months, or one and two years, or all cash, at the option of the purchaser.

Q. That is the usual rule?—A. Yes, sir; there is an act of Congress relating to the sale of the estates of minors which provides that the terms of sale shall be one-third cash and the balance at one and two years, I think.

Q. If that is the rule pursued by the court is it not with the idea that the court is acting, as it were, as the guardian and trustee, and they want to get at the true value of the property at that time?—A. Yes; one-third cash and the balance in six and twelve months, with interest, or one and two years, with interest, or all cash, at the option of the purchaser; that is the way our decrees usually run.

Q. So that the putting in of that term "cash" does not affect the sale; it is only to suit the convenience of the purchaser?—A. Why, it materially affects the sale I should think; it brings purchasers who would be unable to purchase for cash into competition with the purchaser who would be able to purchase for cash.

Q. The time clause, in other words, increases, as I understand you, the number of bidders, and the court makes an order of that kind with a view to getting at the true value of the property, the court considering itself in the light of a trustee?—A. That is the result of it.

Q. Mr. Warner has asked the question several times about the improvement of real estate along certain streets by the erection of buildings. For the purposes of assessments do you think it makes any difference what has increased or caused the increase in the value of real

estate along those streets, whether due to the erection of buildings or otherwise?—A. Not if they are to follow the requirements of the statute, assess at true value in lawful money.

Mr. WARNER. I think you misapprehend the purpose of my inquiry, Mr. Washington. I intended to put the question somewhat similar to this: In your opinion, would the erection of a large number of buildings within a short space of time tend to give an artificial value to property along the line of a certain street greater than the value warranted by the business of that street?

A. I should think so. That would occasion what is ordinarily called a boom.

Q. (By Mr. WASHINGTON.) Yet, if people who own property along that street in those squares refused to sell except at those prices, those prices would constitute the true value of the property, would they not?—

A. I think it would be a criterion.

Q. (By Mr. WARNER.) Mr. Duvall, do you think that there has been any anticipation of values along F street, and if so, from what cause?—

A. I do think so, along F street and in the neighborhood of the City Hall there have been erected within the last ten years a number of large and expensive buildings for office purposes, and I believe that those buildings have anticipated the demand for years to come. One of the principal elements of value in property is the income that may be derived from it, and, in my judgment, those builders in the course of a very short time will find that they are in competition with one another, and that there will be a great many rooms vacated and remain vacant that are now occupied. The tendency is to go from the older buildings to the newer, where better facilities are given.

BRAINARD H. WARNER—Recalled.

Q. (By the CHAIRMAN.) Will you submit to the committee your views on the subject of taxation, and the remedy that you would suggest?—A. I might submit views more extensive than you would be willing to listen to. No doubt there are great and gross inequalities here. I would not attempt to deny that; but I do maintain that our assessors are fair and honorable gentlemen, perfectly competent to perform their duty. They are surrounded, however, by difficulties which will undoubtedly render their valuation faulty. One of the principal of these is the lack of time as well as the want of knowledge, which can be only gained from experience. I submit herewith a letter suggesting a plan, and also a draft of a bill, which, it seems to me, with a rapidly growing city, such as ours, will place the burden where it properly belongs. In other words, it makes a poor man pay for the amount invested in his humble dwelling and the rich man accountable for the value of his property. I think it arrives at a solution of the problem you have before you and which is outside of this investigation; that is, it will in effect place a single tax upon land. I think you will find every man in the District perfectly willing to bear his just proportion of the expense. If he is not we want him to move. The letter and bill which I fully approve and indorse are as follows:

WASHINGTON, D. C., April 27, 1892.

To the Committee of the House of Representatives to investigate assessments:

GENTLEMEN: As a real-estate owner and tax payer of the District of Columbia, I beg leave to submit the following remarks on the subject of assessment of real estate to your honorable committee:

I have been familiar with every assessment made in Washington City for the past thirty years, and there has never been one which was not viciously defective, bearing severely on some, who were generally the poorer class with inexpensive improvements, and favoring the richer with large and important buildings; and I see no reason to doubt that the present assessment will be only a repetition of all previous misadventures. The reason, in my judgment, is that the basis of all these assessments was radically wrong; that is, the officials were required to arrive at the true value of the property, which is always problematical, instead of the assessment being based upon the annual *rental value* of the property. This is particularly applicable to Washington, where a large part of its real estate has been subject to a boom caused by the speculation of real-estate operators.

Real estate is worth nothing except in its capacity to produce rent, or its equivalent, a useful occupation by the owner, and the amount of this rent marks its value as certainly as the quantity of gold does that of a coin, and nothing else does.

There may be a few instances where an owner not desiring to sell and a purchaser stimulated by some unusual motive, may offer more than its value based on its rental capacity, or real-estate operators may succeed by advertisements, etc., in creating a boom so that the prices of property go beyond their rent-producing capacity; but these are all abnormal and are no correct basis for fixing values of property in a city for purposes of taxation.

There was some excuse in the early tax laws for adopting the cash value of real estate as the basis for assessment, because in those days not more than one-fifth of the area of Washington was improved by buildings. At this date there is not one-fifth of that area which is not improved by buildings fairly and reasonably adapted to their location.

The first and paramount consideration in taxation should be equality of burden. The amount of tax men are compelled to pay is not so important as that the burden should be equal; and this burden will always be unequal if assessors simply walk or drive along the public streets, look at the front walls of houses and on that determine values. Nor are these officials to be blamed, for in no case has Congress given them any more time than enough to drive around the squares of Washington and note their opinions on the external appearance of each property. Besides, how can any set of men know the values of all the lots in all the localities of Washington? The whole affair, in a word, degenerates into an extensive system of guessing.

But if the rental value of land be taken as the guide, then there is no uncertainty as to reasonably well improved real estate. For every owner and every tenant in looking after their respective interests have solved this question in every case. You may depend upon it, every owner is getting as high rent as he possibly can for his property, and he knows better than any body of assessors can know its true value.

This scheme of arriving at assessment values from rental values has the great merit of being eminently just, and makes every owner pay according to the income received. If he receives \$1,000 a year rent (or occupies the land himself), he will be compelled to contribute a definite proportion of it; if only \$300, the same proportion.

Under the present system of guessing at values, a man receiving only \$600 rent may pay as much as another who obtains \$1,000. One is impoverished by the tax, while the other smiles in his sleeve and keeps quiet. This excessive tax, as a rule, falls upon the poor man and small holder, because the cursory inspection of assessors does not enable them to arrive at the amount of money in a large building.

Nor are there any practical difficulties in the system here proposed. Washington is at this moment very generally improved by buildings suitable to the location of the land. Where there are vacant lots—and their value is not one-thousandth of the improved lots—the assessors would have simply to determine what would be their rental value if improved by houses similar to those in the vicinity, and this rent value of the vacant land would fix its assessment.

In order to ascertain this rental value of real estate, the assessors can be empowered by Congress to summon owners and tenants and inquire of them under the penalties of a judicial oath. Where the premises are occupied by owners the rental of the adjoining properties will readily indicate its rental value.

Nor is there any difficulty in arriving at what ought to be the ratio of tax to the rent. Under the present assessment the average is about 12 per cent of the rent. Thus, an owner receiving \$1,000 a year pays about \$120 a year tax. In the case of small houses this rate is 15 per cent; in large properties, and particularly property devoted to business it goes down to 8, 9, and 10 per cent.

In this city of small salaries, small incomes, and no commerce, but with only a retail trade supplying daily consumption, 14 per cent is as high a tax as property will stand consistent with the continued improvement of the city.

I append the rough draft of a bill to carry out the above view.

Respectfully,

H. Rep. 5—36

S. T. PHILLIPS.

Be it enacted by the Senate and House of Representatives in Congress assembled, That the assessment being made at the present time of real estate in the District of Columbia be discontinued.

SEC. 2. That the officers and their successors making the same shall, without further delay, enquire into the annual rental value of each and every parcel of land in the District of Columbia, and a tax not exceeding fourteen per centum shall be levied on the same annually in lieu of the present system of taxation, the Commissioners to fix the rate annually.

SEC. 3. That the said officers and their successors shall have the power to summon before them all owners, tenants, agents, and other persons, who shall be interrogated under oath by said assessors as to the rent of said land and premises, their condition of repair, and such other matters which, in the judgment of said assessors, may tend to show the just or actual rental value of said land and premises, improved, and applied to reasonable uses.

The said assessors may employ a stenographer to take down such interrogatories, and any false swearing is hereby declared a felony and punishable as other cases of perjury.

SEC. 4. That it is made the duty of each and every owner (or his authorized agent) of lands within the said District to file during the month of November of each year with the assessor of the said District a statement in writing under oath of all leases or contracts for rental, whether verbal or in writing, of each and every parcel of land or houses, or parts thereof, owned by him. That it is made the duty of each and every owner of land (or his authorized agent) within the said District and which he occupies himself or herself, or which is unimproved by any building, to file during the month of November of each year with the assessor a statement in writing, under oath, of the annual rental value of each and every parcel of land so owned by him or her or them. And the said assessor shall, on the first of January of each year, fix the annual rental value of each and every parcel of land in the District of Columbia. False swearing in this return to be punished as perjury.

SEC. 5. The return of such owner shall not be conclusive against the District of Columbia, but the assessors may, when they have reasonable ground to believe that the return of such owner does not represent the just annual rental value of the land, inquire of the same, and fix the same for purposes of taxation independently of any agreement between the landlord and tenant, and independently of the estimate of such owner or his agent.

SEC. 6. That a failure on the part of the owner to make such return after the 30th of November shall be punished by a fine of five dollars for each day he or she or they are in default, which fine shall be assessed by the assessors, and be a part of the tax and a lien on the land, for which it shall be sold as in cases of the nonpayment of the tax.

APRIL 28, 1892.

Committee met pursuant to adjournment.

Present, the chairman and Mr. Washington. Absent, Mr. Wadsworth.

JOHN F. COOK—Recalled.

JOHN F. COOK recalled.

By the CHAIRMAN:

Q. What lot was it that you reported to Mr. Washington and me last night that was assessed at \$103,000 and was sold at \$80,000?—A. Lot 5, in square 254.

Q. Can you give us the names of the parties?—A. It was sold in the name of A. D. Barbour, I think; purchased by Mr. Wood; it is the Imperial Hotel property; the improvements were assessed formerly at \$28,000 and we put them at \$20,000.

Q. And the ground you assessed——A. At \$5.50 a square foot we put it; I have not the contents.

Q. Do you remember about a week ago, or within ten days, Mr.

Washington and I came down late one day and looked over your field book with you?—A. Yes, sir.

Q. Do you recall that at that time we compared your estimates on square 253 with the estimates of Mr. Moore?—A. Yes, I do.

Q. And they were almost identical?—A. Pretty nearly so; pretty near the same, sir.

Q. Will you please turn to your book, square 253, and tell us what your figures were at that time on lot 1?—A. On all parts of lot 1 mine was \$12.50 per square foot; lot 2 was \$10.

Q. All parts of it?—A. Yes, except the west 26 feet, I had it \$9; I would say the east 29 feet 4 inches at \$10, and the west 26 feet at \$10; subdivision 30 I had at \$8; part of lot 3 at \$8; sub 31 at \$8. I wish to say that these are only my field notes, not assessments. From lots 4 to 8 I had at \$8; the east 54 feet 5½ inches front of lot 9 I had at \$12; subs 28 and 29 I had at \$14; part of 11, the north 19 feet 10½ inches I had at \$9; lot 12 I had at \$5; lot 13, the south 22 feet 10 inches at \$5, and the north 22 feet at \$6; lot 14, both parts, at \$10; lot 15, front and back ground, at \$5; sub 27 I had at \$6; lots 16 to 21, inclusive, I had at \$5, front and back ground; lot 22 at \$6, all of it; all of lot 23 at \$8; lot 24 at \$7, the north 22 feet at \$7, and the 22 feet 10½ inches at \$5; lot 25, both parts, and the north 22 feet of 26, at \$4; the south 22 feet 10½ inches at \$5; the back ground of 26 at \$4, both parts.

Q. You can make any further explanation you like?—A. These are only my field notes, and the equalization develops the other amount as furnished the committee.

Q. And the changes from your figures as read by you and Mr. Moore to us at the time we mentioned have been made since that interview?—A. The field notes, and since then the equalization has taken place and the result has been the figures furnished the committee with this report that you have now. There is another lot recently sold within the year that also governed, where we reached the conclusion on it as to the value; it was a piece sold in the name of Rachael Trimble, I think. It was 12 feet 7½ inches front of lot 3, square 254. We have assessed it at \$7 and it sold at about \$6.50; that is within the year. A piece opposite in square 255, directly opposite, sold at \$5 per foot, in the name of Fletcher.

Q. Fronting on what square?—A. On Pennsylvania avenue and E street, where it comes in there by the Richmond and Danville Railroad office.

Q. You said something to us in your former examination about your considering the salary very small that you get as assistant assessor. Did you make more than that before you went into this office?—A. I did, sir.

Q. About what salary did you earn?—A. I suppose about \$3,500 a year, a little better. Before that I was collector of taxes of the District. That was a salaried office, but of course that is not personal employment.

Q. Why did you accept this position at so small a salary as \$2,500?—A. Well, the inducement was held out. In conference with some of the Commissioners a statement was made that it would be more; that they would see that it was made more; that it was not commensurate with the work.

Q. It is disagreeable sort of work, is it not?—A. I expect something of that kind; it is severe work.

TESTIMONY OF SAMUEL PHILLIPS.

SAMUEL PHILLIPS, having been duly subpoenaed at the request of Mr. Warner, was sworn by the chairman, and testified as follows:

By the CHAIRMAN:

Q. Mr. Phillips, what is your occupation?—A. I am a retired lawyer and a moderate real-estate owner in the District of Columbia.

Q. Have you had a large experience in dealing in real estate in Washington?—A. I do not know that I have had a very wide experience; my own purchases and general knowledge of property sales in Washington have been the principal amount of my experience.

Q. Will you please give us the advantage of your views on taxation in Washington as it at present exists, and the remedy?

The WITNESS. I beg leave to submit to the honorable committee of the House of Representatives the following communication:

WASHINGTON, D. C., April 27, 1892.

To the Committee of the House of Representatives to investigate assessments:

GENTLEMEN: As a real-estate owner and taxpayer of the District of Columbia, I beg leave to submit the following remarks on the subject of assessment of real estate to your honorable committee:

I have been familiar with every assessment made in Washington City for the past thirty years, and there has never been one which was not viciously defective, bearing severely on some who were generally the poorer class with inexpensive improvements, and favoring the richer with large and important buildings; and I see no reason to doubt that the present assessment will be only a repetition of all previous misadventures. The reason, in my judgment, is that the basis of all these assessments was radically wrong; that is, the officials were required to arrive at the true value of the property, which is always problematical, instead of the assessment being based upon the annual *rental value* of the property. This is particularly applicable to Washington, where a large part of its real estate has been subject to a boom caused by the speculation of real-estate operators.

The WITNESS. Pausing in the reading of my letter to the committee, I would like to remark on this subject that certain sections of Washington have been particularly subject to the operations of these real-estate speculators, while other sections have not. The consequence is that where they have operated the prices have become, in a great measure, inflated and even fictitious; where they have not operated they have remained with their truer indications of the value of the property. These speculative booms have given rise to great inequality in values, and make it impossible for any set of men, in my judgment, to establish an equality of taxation throughout the entire city.

(Witness resuming the reading of the letter):

Real estate is worth nothing except in its capacity to produce rent, or its equivalent, a useful occupation by the owner and the amount of this rent marks its value as certainly as the quantity of gold does that of a coin, and nothing else does.

There may be a few instances where an owner not desiring to sell and a purchaser stimulated by some unusual motive, may offer more than its value based on its rental capacity, or real estate operators may succeed by advertisements, etc., in creating a boom so that the prices of property go beyond their rent-producing capacity, but these are all abnormal and are no correct basis for fixing values of property in a city for purposes of taxation.

There was some excuse in the early tax laws for adopting the cash value of real estate as the basis for assessment, because in those days not more than one-fifth of the area of Washington was improved by buildings. At this date there is not one-fifth of that area which is not improved by buildings fairly and reasonably adapted to their location.

The first and paramount consideration in taxation should be equality of burden. The amount of tax men are compelled to pay is not so important as that the burden

should be equal; and this burden will always be unequal if assessors simply walk or drive along the public streets, look at the front walls of houses and on that determine values. Nor are these officials to be blamed, for in no case has Congress given them any more time than enough to drive around the squares of Washington and note their opinions on the external appearance of each property. Besides, how can any set of men know the values of all the lots in all the localities of Washington? The whole affair, in a word, degenerates into an extensive system of guessing.

But if the rental value of land be taken as the guide, then there is no uncertainty as to reasonably well-improved real estate. For every owner and every tenant in looking after their respective interests have solved this question in every case. You may depend upon it, every owner is getting as high rent as he possibly can for his property, and he knows better than any body of assessors can know its true value.

This scheme of arriving at assessment values from rental values has the great merit of being eminently just, and makes every owner pay according to the income received. If he receives \$1,000 a year rent (or occupies the land himself) he will be compelled to contribute a definite proportion of it; if only \$300, the same proportion.

Under the present system of guessing at values, a man receiving only \$600 rent may pay as much as another who obtains \$1,000. One is impoverished by the tax, while the other smiles in his sleeve and keeps quiet. This excessive tax, as a rule, falls upon the poor man and small holder, because the cursory inspection of assessors does not enable them to arrive at the amount of money in a large building.

The WITNESS. In explanation of how the present system operates, in my judgment, to the injury of the poor only, and to the preference of the rich man, I will state that it is very much easier for assessors to arrive at the value of small houses, costing \$2,000, \$3,000, or \$4,000 than of a building costing from \$50,000 to \$100,000. The small improvement will be assessed to its full value; the large improvement will be assessed at probably not more than 50 per cent of its cost. The effect of this is that one pays twice as much tax as the other. I will state further: The rich man receiving \$10,000 a year rent from his house will be taxed very much less in proportion than thirty-three small owners whose houses are worth \$300 a year. Probably the rich man will get off with the payment of one-half of the taxes that are placed upon the poorer men.

(Resuming the reading.)

Nor are there any practical difficulties in the system here proposed. Washington is at this moment very generally improved by buildings suitable to the location of the land.

The WITNESS. I will illustrate by way of explanation. They do not compare with buildings in New York or Chicago and other large cities of the Union, because there is no demand for them here, where salaries are small, commerce is insignificant, practically devoted to supplying retail demands of the inhabitants, and if there were a series of buildings, such as the Washington Loan and Trust building, erected along F street or Pennsylvania avenue, from one end to the other, they would not pay 1 per cent on their cost. Owners may from selfishness be fairly, in the large majority of cases, expected to improve the property according to the real substantial and permanent demand.

(Resuming reading.)

Where there are vacant lots—and their value is not one-thousandth of the improved lots—the assessors would have simply to determine what would be their —

The WITNESS. Now I come to this subject of unimproved land you observe, land where there are no houses upon it.

(Resuming reading.)

Rental value if improved by houses similar to those in the vicinity, and this rent value of the vacant land would fix its assessment.

The WITNESS. You understand me, gentlemen?

The CHAIRMAN. Fully.

H. Rep. 1469—7

(Resuming reading.)

In order to ascertain this rental value of real estate, the assessors can be empowered by Congress to summon owners and tenants and inquire of them under the penalties of a judicial oath. Where the premises are occupied by owners, the rents of the adjoining properties will readily indicate its rental value.

The WITNESS. Now, I see no practical difficulty in arriving at the rental value of land occupied by owners, because we have probably one-half of the houses in Washington now occupied by tenants scattered in all directions, and they at once form the standard by which the adjoining property occupied by owners could properly and reasonably be fixed as to rental. In addition to that it is very much easier to fix the rent of a house than its value. Men will not differ \$50 or \$100 in ordinary residential properties, and indeed in ordinary business properties as to its annual rental value, when those same men may differ to the extent of thousands of dollars as to its actual cash value.

(Resuming the reading.)

Nor is there any difficulty in arriving at what ought to be the ratio of tax to the rent. Under the present assessment the average is about 12 per cent of the rent.

The WITNESS. Not only that received, but the rental value of property occupied by owners. Now, I think that possibly real estate might stand in Washington 1 or 2 per cent more, but no more than that.

Mr. WARNER. I beg pardon. What do you mean by 1 or 2 per cent more?

The WITNESS. Instead of 12 per cent. This whole scheme is an income tax secured by lien on real estate with a definite means of arriving at what that income is that can not be hidden or falsified.

Mr. WASHINGTON. What it is or should be?

The WITNESS. Yes, sir. You can not improve a city with houses unless you make it profitable to men to do it. If you take a piece of improved property bringing a rent of \$1,000 a year, it will cost a man to buy that about \$15,000. The assessors will assess it at about \$9,000 to \$10,000. If assessed at \$10,000, $1\frac{1}{2}$ per cent makes him pay \$150 a year tax under the present system. If you take the full value of this property and assess it at \$15,000, what he paid for it, you observe, and assess him at \$1.50 on the hundred, you get \$225 a year tax that he will have to pay. That deducted from the \$1,000 a year rent that he receives leaves him only \$775 on his investment of \$15,000.

The CHAIRMAN. And on which he has to pay insurance.

The WITNESS. I am not talking about that. That is just 5 per cent. A man who receives only 5 per cent out of which he must pay insurance, repairs, losses of rent from vacancies and the gradual deterioration of buildings, it brings his investment down very low.

The CHAIRMAN. The gradual deterioration of buildings?

The WITNESS. Yes, sir; the land does not deteriorate except in certain sections of the city. This brings it largely below 5 per cent. and the owner or capitalists instead of building up the city seek other investments. This in my judgment demonstrates that the assessors are correct in not assessing real estate at its actual selling prices between individual and sporadic purchasers. You observe what I mean.

The CHAIRMAN. Let me interrupt you with a question. An increase in the assessment, if going with it, meant a decrease in rate, is not the kind of increase you are objecting to?

The WITNESS. I count on the present rate of taxation to remain the same.

The CHAIRMAN. Then let me remind you. The law requires the

District Commissioners, after the assessment of property has been determined, and the gross amount ascertained of taxable property in the District, to fix the rate at any amount lower than \$1.50 in their judgment, necessary to raise the amount.

The WITNESS. There are so many agencies at work, and so many influences brought to bear to raise large revenues, that you may reasonably expect that the highest rate laid down by law will be attained in a very few years.

The CHAIRMAN. You are right in that, judging by the past, because they have fixed it at the limit in every case.

B. H. WARNER—Recalled.

At this point B. H. WARNER was recalled, and made the following statement:

I desire to state to the committee that Mr. Phillips has had a wider range of experience than most any man I know of during the past twenty-five years, and has more time for thought regarding his experience. He has not only made a fortune out of the practice of law, but also the real estate that he has purchased; he was president of the Washington and Georgetown Railroad Company, also president of the Third Avenue Railroad Company, New York city, at a salary of \$20,000 a year, from which he voluntarily resigned, and if the committee will pardon me I regard Mr. Phillips' views as being as nearly correct and reliable as any man's that could be brought before the committee.

MR. PHILLIPS—Recalled.

The CHAIRMAN. Please continue your statement.

The WITNESS. Now, taking the same example that I have referred to of \$1,000 a year rent and taxing it at 15 per cent you arrive precisely at what would be the present rate, \$150 a year with a \$15,000 property assessed at \$10,000; so that this proves the accuracy of the ratio of tax to rent that I have mentioned, and which I would recommend, about 13 or 14 per cent of what ought to be the annual rental value of that property, it being premised that the property is reasonably well improved, the land being well improved according to the place in which it is situated.

(Resuming the reading:)

Thus an owner receiving \$1,000 a year pays about \$120 a year tax. In the case of small houses this rate is 15 per cent; in large properties, and particularly property devoted to business, it goes down to 8, 9, and 10 per cent. In this city of small salaries, small incomes, and no commerce, but with only a retail trade supplying daily consumption, 14 per cent is as high a tax as property will stand consistent with the continued improvement of the city.

The WITNESS. That will bring you a great deal of money. You will increase your taxation—

The CHAIRMAN. If everybody is brought up to your standard.

The WITNESS. Yes, sir; 14 per cent will bring you a great deal of money. I say 14 per cent is high; it is the maximum; don't let them go beyond that. Fourteen per cent is as high as property will stand, as I have just shown by this little demonstration, and otherwise the capitalists will be driven to other investments than improving the city.

(Resuming reading:)

I append the rough draft of a bill to carry out this view.

The bill is as follows:

Be it enacted by the Senate and House of Representatives in Congress assembled, That the assessment being made at the present time of real estate in the District of Columbia be discontinued.

SEC. 2. That the officers and their successors making the same shall, without further delay, inquire into the annual rental value of each and every parcel of land in the District of Columbia, and a tax not exceeding fourteen per centum shall be levied on the same annually in lieu of the present system of taxation, the Commissioners to fix the rate annually.

SEC. 3. That the said officers and their successors shall have the power to summon before them all owners, tenants, agents, and other persons, who shall be interrogated under oath by said assessors as to the rent of said land and premises, their condition of repair, and such other matters which, in the judgment of said assessors, may tend to show the just or actual rental value of said land and premises, improved and applied to reasonable uses. The said assessors may employ a stenographer to take down such interrogatories, and any false swearing is hereby declared a felony and punishable as other cases of perjury.

SEC. 4. That it is made the duty of each and every owner (or his authorized agent) of lands within the said District to file during the month of November of each year with the assessor of the said District a statement in writing, under oath, of all leases, contracts for rental, whether verbal or in writing, of each and every parcel of land or houses, or parts thereof, owned by him. That it is made the duty of each and every owner of land (or his authorized agent) within the said District and which he occupies himself or herself, or which is unimproved by any building, to file during the month of November of each year, with the assessor, a statement in writing, under oath, of the annual rental value of each and every parcel of land so owned by him or her or them. And the said assessor shall, on the first of January of each year, fix the annual rental value of each and every parcel of land in the District of Columbia. False swearing in this return to be punished as perjury.

SEC. 5. The return of such owner shall not be conclusive against the District of Columbia, but the assessors may, when they have reasonable ground to believe that the return of such owner does not represent the just annual rental value of the land, inquire of the same, and fix the same for purposes of taxation independently of any agreement between the landlord and tenant, and independently of the estimate of such owner or his agent.

SEC. 6. That a failure on the part of the owner to make such return after the thirtieth of November shall be punished by a fine of five dollars for each day he or she or they are in default, which fine shall be assessed by the assessors and be a part of the tax and a lien on the land, for which it shall be sold as in cases of the nonpayment of the tax.

Q. (By the CHAIRMAN.) What do you think would be the effect in the District of Columbia of collecting all the revenues paid now by the District on land exclusive of improvements—that is, tax no improvements, but take from the land value a little higher percentage and let the improvements go free, as an equal means of assessing; in other words, let the assessors assess lands exclusive of improvements at its rental value, as you describe, ignoring whether it is a fine house or not, considering only the neighborhood?—A. The subject of single tax is so broad, and there are so many arguments pro and con, that I am unable to answer your question.

Q. Then I will say this: You stated so well and, I think, truly, in your examination, the effect of taxing buildings, that it operated to discourage them. I now ask you whether the taking of the tax off the buildings would not greatly stimulate the building up of vacant ground and the putting up of a good house where there is now a shanty, and relieving somewhat the burden of the men who have erected buildings beyond their present usefulness in that they would pay less than they pay now by taking the tax off of improvements; would it not equalize the matter?—A. I can not answer. I have not given the subject sufficient consideration.

Q. (By Mr. WARNER.) I would like to ask whether in your opinion there has been any artificial value given to property here within

the past five years by what is termed a "boom"?—A. There is no doubt about that.

Q. If you have any instance in mind will you kindly state it for the information of the committee?—A. Some five years ago, gentlemen, I thought I would buy some lots on Fourteenth street, looking upon that as one of the arteries out into the suburban sections of the District; and I walked up Fourteenth street and took down the names of the real estate brokers who had signs up on the lots.

Mr. WARNER. Real estate owners or agents?

The WITNESS. I should say real estate agents; on both sides of the street. I afterwards sought those gentlemen, and found in every case that I investigated that the property had been bought by the real estate brokers or speculators from the original owners, and at a reasonable and proper value; that after the real estate broker had held it six months or a year that he had put the price up from half a dollar to a dollar a square foot; that he, in many cases, had sold again to another real estate broker, who had, without any reason to make the land more valuable, advanced the price from 50 cents to \$1, until they had lots, in my judgment, at such a figure that I would not have gotten, after putting a proper and reasonable building suitable for the location, over about 2 or 3 per cent on the investment. That is one instance. Each man wanted to advance the price simply because he had bought.

Q. (By Mr. WARNER.) Do you happen to remember any other instance?—A. This thing is very general in regard to suburban property; a man buying land at \$100 an acre, and subdividing it on the suburbs of the city and selling it at \$1,800 and \$2,000 an acre in some instances where there has been practically but little improvement made. That shows that these values have been very much affected by the real estate boom. I want to say that in the early experiences, thirty years ago, gentlemen, there were hardly any real estate brokers in Washington, about the beginning of the war. Thomas E. Waggaman was one of the very first, I think.

Mr. WARNER. He was not in business thirty years ago.

The WITNESS. No; but he was one of the very first. Their business in those days was confined to collecting rents for people; it soon got into selling lots for owners. Next the number of real estate brokers became so great from time to time—until now the least part of the business of the real estate brokers is selling lots for owners, they rather are buying them for themselves and selling them.

The CHAIRMAN. Land speculating.

The WITNESS. Yes, sir.

Q. (By the CHAIRMAN.) Is it a good or a bad thing?—A. Well, moderate.

Q. (By the CHAIRMAN.) To the extent it is carried on here is it a good thing?—A. I can not say that it is a bad thing, for Washington has prospered very much within the last twenty years.

Q. (By Mr. WARNER.) As a matter of fact, who have invented the projects and the schemes which have made the national capital within the last twenty-five years?—A. The real estate speculators.

Q. (By Mr. WARNER.) You are acquainted with F street, are you not?—A. Yes; somewhat.

Q. Have you witnessed any remarkable change in values on that street within the past five years?—A. I am not acquainted with the values there; I do not know how to arrive at values other than by the process that I have mentioned to the committee. Any other method, in my judgment, is guessing.

Q. Do you know whether, in the public estimation, properties have appreciated in value within the past five years?—A. It is generally assumed that they have.

Q. Do you, as a matter of fact, believe, or do you not believe, that values are inflated on F street?—A. I believe they are very largely inflated, because rents have not gone up correspondingly.

Q. Will you kindly state what has produced this inflation?—A. Competition.

Q. Well, is there any just and reasonable demand for business property on F street that has caused so rapid enhancement of prices in public opinion?—A. I do not know of any.

Q. What, in your opinion, would be the effect of a tight money market on the valuation of property on F street between Ninth and Fifteenth streets; not a panic, but a tight money market?—A. I do not know.

Q. You have your own judgment?—A. Of course, a stringency of market always knocks down prices; that is, the general proposition that applies to every commodity. But the putting up of property so high on F street, I will state, will have this effect, that it will drive the improvements to other streets.

Q. Do you think, Mr. Philips, that the present value will continue on F street?—A. I am not able to answer.

Q. Have you any property on F street?—A. I have, sir.

Q. Where is it located?—A. In square 320.

Q. What lot is it?—A. Part of lot 1.

Q. Is it on the corner?—A. No, sir.

Q. It is a few feet from the corner, is it not?—A. Adjoining the corner.

Q. What is the size of it?—A. About 16 by 55 feet.

Q. (By the CHAIRMAN.) How is it improved?—A. It is a three-story brick and back building and cellar.

Q. (By Mr. WARNER.) According to your rule, what is that property worth?—A. I receive now for that property \$1,099 a year, and I do believe that if the tenant went out to day that I could get over \$1,200 a year rent for that property. At 14 per cent that would be \$178 tax.

Q. (By the CHAIRMAN.) It is how many feet front?—A. About 16½ feet.

Q. How far is it from the corner? I notice lot No. 1 is divided into four different places?—A. I commence 33½ feet from the corner.

Q. It contains 944 square feet?—A. I think so.

Q. What are the improvements worth; that is, the buildings, I mean?—A. Two thousand five hundred dollars.

Q. According to your rule, what do you think your tax ought to be?—A. One hundred and seventy-eight dollars.

Q. What is the ground worth per square foot, according to your rule?—A. Twelve dollars a foot.

Q. Then at \$12 a foot your land is worth how much?—A. It is worth \$11,328.

Q. And add \$2,000 improvements on that?—A. Thirteen thousand three hundred and twenty-eight dollars.

Q. On which you are receiving a net income of \$1,000?—A. No, sir; \$1,100.

Q. That pays what rate of interest?—A. Twelve dollars a foot would bring 14 per cent on the rent—

Q. (Interrupting.) And your net income from that ground, after paying your taxes, insurance, and repairs, is what?—A. Eight hundred and twenty-two dollars.

Q. And the interest you get on your investment, which you estimate at \$12 a foot, and \$2,000 improvements, amounting to \$13,328, is—
A. Six and two-tenths per cent. You see, it comes out right all around.

Q. (By Mr. WARNER.) Is there any location in Washington that you formerly regarded as a fashionable location where property has depreciated within the past two years?—A. Yes; very greatly.

Q. Will you give us one or two instances?—A. C street, between Third and Four-and-a-half streets, N. W., when I was a boy, was the *crème de la crème* of Washington; now it is devoted to boarding-houses, and it is not worth anything like what it was, relatively.

Q. (By the CHAIRMAN.) Actually, it may be worth more?—A. Yes; but I say relatively. Now, in regard to business property the same thing holds. When I was a lad the property on Pennsylvania avenue around the foot of the Capitol was the most valuable business property in Washington. To-day a large part of it is occupied by people who keep restaurants, and so on, and it is not of a very first class character.

Q. (By Mr. WARNER.) Do you think there is any possibility of any rapid change of values in Washington?—A. There are changes taking place all the time. In New York sections that were once very valuable are to-day of very little value.

Q. (By the CHAIRMAN.) Under your scheme of a change of the assessment laws you recommend making a new assessment annually?—A. I do.

Q. You think three years are too long?—A. Under this system that I recommend I have suggested one every year. Where a man's property went down his tax went down; if it went up his tax went up. I would like to say that I consider the present assessors as good and capable men as could be found in the District of Columbia; they are perfectly competent and honest.

At this point the committee adjourned until to-morrow, Friday, April 29, 1892, at 11:45 o'clock.

WASHINGTON, *Friday, April 29, 1892.*

The committee met at 11:45 o'clock a. m. but, without transacting any business adjourned until to-morrow, Saturday, at 11:45 a. m.

WASHINGTON, D. C., *April 30, 1892—11:45 o'clock a. m.*

The committee met pursuant to adjournment.

The clerk called the roll, and there were present the chairman and Mr. Washington; absent, Mr. Wadsworth.

TESTIMONY OF ROSWELL A. FISH.

ROSWELL A. FISH, being duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation, Mr. Fish?—A. I am a real estate broker.

Q. What was your occupation recently, before you went into the real estate business?—A. I was in the assessor's office.

Q. When did you leave the assessor's office?—A. In March, 1889, I think.

Q. How long had you been in that office?—A. I had been assessor about two years; that is, assistant assessor for about two years and a half.

Q. How many years had you been engaged in the office previous to that in other capacities?—A. Well, I resigned as Assistant Register of the Treasury, occupying that for about two years. I was assistant assessor for two years, and previous to that I had been assistant assessor for about seven years.

Q. How came you to resign the office in the Treasury Department?—A. Col. Dodge, the assessor, having died, I was requested by the Commissioners to take the position.

Q. What Commissioners?—A. William B. Webb, Mr. Wheatley, and Col. Ludlow, to accept the position as assessor. I was sent for and requested to take the position.

Q. And you held it for two years?—A. Yes, sir.

Q. How came you to leave it?—A. I was dismissed peremptorily.

Q. What was the cause of your dismissal?—A. No reason was stated to me.

Q. No reason was stated to you by the Commissioners?—A. No, sir; simply, your services are no longer required.

Q. Can you tell us, in your judgment, what was the cause of the dismissal?—A. Well, I had taken an active interest in the manner of assessing, and I had stated my views very freely in the newspapers of the city; a triennial assessment was about to take place, and I thought it was necessary to have a just and equitable assessment, that these things should be thoroughly understood by the people. It created a good deal of opposition from a certain class in this town, and, I presume, that class was instrumental in having me removed; they were opposed to the plan I suggested.

Q. What was the plan you suggested?—A. Carrying out the law, which was to have an equitable assessment. Fundamentally it was that the assessment of real property in the District of Columbia must be made at a true value in money. This, I instructed the assessors, should be construed to mean in their best judgment what the property was really worth when they assessed it. I am referring now to an official copy of the report of the assessor.

Q. You read from a copy of an order, do you not?—A. Yes, sir; I am reading now from an official copy, dated March 12, 1889.

Q. That is your interpretation of the language "true value?"—A. That is the law; a quotation taken from the law.

Q. And your interpretation is that that means what?—A. My interpretation is that it must be construed to mean your "best judgment what the property is really worth when you assess it."

Q. And under what circumstances; favorable or adverse?—A. To explain, I should assess property precisely as you would if you loaned money on it. If you would come to me as a real estate man to secure a loan on a piece of property I would go out and see what I could sell it for in the market.

Q. Under ordinary circumstances?—A. Yes; neither favorable or adverse.

Q. That was what your instructions meant?—A. Yes, sir.

Q. Was any complaint made to you about that circular or order of yours?—A. The circular was countermanded and an order given for my removal by the Commissioners.

Q. What was the language of that order?—A. I think that order was to assess it under adverse circumstances.

Q. You do not really know what that order was?—A. I am sure that is the order, though I do not know the exact phraseology.

Q. Can you tell me where I can get a copy of that order?—A. You can get a copy by writing to the assessor for the District of Columbia.

Q. That order was issued immediately after you left in 1889?—A. Yes, sir.

Q. And previous to the appointment or previous to the work carried on by the twelve assessors?—A. Yes. They must have an order to act upon. I do not know whether that "adverse statement" was made to them or not. It was made under the board of three assessors, this order of mine, I think was.

Q. Was there any attempt made by anybody to get you to change that order?—A. I would not like to go into that. I can say, however, that I was told by Mr. Wheatley that I must stop this agitation of taxes in the board room in the presence of Mr. Wheatley and Mr. Webb and Col. Ludlow; that I must stop the agitation of my theory of taxation.

Q. And your theory was?—A. My theory was that a man owning \$10,000 worth of property and another man owning \$1,000 should pay ten times as much as the latter; that is, it should be equitable, equally distributed. My theory was also that if the assessment was more than necessary for the expenses, the rate should be reduced.

The CHAIRMAN. Finish what you were saying about the conversation.

The WITNESS. I was summoned before the Board of Commissioners, Messrs Webb and Wheatley; the Engineer Commissioner, Mr. Lydecker, I do not think was present at the time, and it was said that I must stop this agitation, that it was then appearing in the newspapers and it was not satisfactory to them, and if I did not do it it was intimated that my services would be no longer required.

Q. What did you say?—A. I said I could not stop the agitation; in the first place it had gone too far, and, in my judgment, it was right, and I was a sworn officer and had to carry out the law as I interpreted it.

Q. And how long after that was it that you were discharged?—A. I was discharged that very afternoon, without my knowledge that it was going to be done. In the morning I saw my dismissal in the morning paper.

Q. Was there any intimation made to you that if you would stop the agitation you could stay on in your place?—A. The inference was plain that if I stopped the agitation there would be nothing done.

Q. By the agitation you mean this order?—A. This order and what I was agitating in the newspapers of a fair and equitable assessment. This order had been approved by them.

Q. They had already approved the order?—A. They had approved my order and when it got out among the people the fuss commenced.

Q. What people objected, what class of people?—A. The rich people in the northwest and the syndicates.

Q. You did not hear any complaint from East Capitol, did you?—A. No, of course not. I was on the side of the majority, who were the poor people, men in moderate circumstances.

Q. They did not complain?—A. By no means. I was on their side.

Q. Then the failure to apply your interpretation of that rule operated in whose interest as between the classes of people?—A. Why, in the interest of the man who was assessed one-fifth or one-tenth of the value.

Q. What class was that?—A. The rich; large real estate owners.

Q. A rich man might own a very small home and rent it to somebody. Would his property be assessed at 20 per cent if it was a small home?—A. No, the probabilities are if it was a small home it would be likely to be assessed correctly.

Q. Then, in that case, the rule does not help the rich man?—A. No, not in that case, but the majority of their holdings are large properties.

Q. Well, don't I understand you to mean this, that it was not so much the rich that were affected by it, but that class of very valuable property as compared to the small home owners?—A. I am not speaking against the rich man as an abstract proposition. I have no objection to a man being rich if he gets it without the poor man paying for it entirely by way of taxation.

Q. My question was, not so much as between the kind of men, rich or poor?—A. The holders of large and valuable properties.

Q. Who, under your rule, would have had to pay more than they did under the assessment that was subsequently made?—A. Yes, sir; that is it exactly. My reports will show large and valuable properties in the northwest and the county was assessed at about 20 cents on the dollar, where the householder, of small properties, was assessed at about 80 cents on the dollar.

Q. And that difference of 60 per cent represented the property that was really untaxed?—A. Yes, sir.

Q. In your judgment, how much did that amount to on the assessment?—A. My figures show that at that time, 1888, I considered the city was losing about \$1,000,000 in taxation.

Q. You mean \$1,000,000 worth of property was not taxed?—A. No, sir; \$1,000,000 of tax.

Q. That means \$66,000,000 of property escaped taxation?—A. Yes, sir; \$66,000,000 would make \$1,000,000.

Q. Then \$66,000,000 of property was not taxed?—A. No, sir.

Q. That is to say, if some property was assessed at 80 per cent of its value and other property at 20 per cent, that difference of 60 per cent represented \$66,000,000 that did not pay tax at all?—A. That did not pay taxes.

Q. That was in 1889?—A. Eighteen hundred and eighty-eight. I was then getting ready for the triennial assessment, trying to correct it.

Q. Can you name any specific pieces of property that illustrate this variation?—A. I regarded the entire assessment of F street from Fourteenth street down to Seventh street as grossly wrong, the whole of it.

Q. And you are familiar with what that assessment was made after you left the office?—A. Well, they did not assess it much higher after I left; not anything near what it ought to be.

Q. That is, the property you claim was not taxed at over 20 per cent?—A. A part of it.

Q. Please name some piece of property taxed at 80 per cent.—A. I could name anywhere in the southeast and what is generally called Capitol Hill and South Washington.

Q. That property is occupied by what character of people?—A. Generally by residents, by men of small means; they are small properties, worth anywhere from \$1,000 to \$6,000 or \$7,000. As I stated in my report, those men, the subassessors, can go around and look at properties worth 25 cents a foot, with a house worth about \$3,000, and get very near the value, and they assess it at about 80 per cent of its value, or as they tried to, about two-thirds of its value; but the minute they

go on to F steet, among the northwest, where property was ranging from \$2 to \$15 or \$20 a foot, they were entirely at sea. They were ignorant men, ignorant of the values, as I said in my report.

Q. Will you submit the whole of your report, to go into the record?—

A. Yes, sir; I would like it to go into the record as it is.

The report referred to is as follows:

REPORT OF THE ASSESSOR, 1888.

GENERAL ASSESSMENT.

A general assessment of all real estate in the District will be made next year. The assessment then made will determine the tax for the ensuing three years.

By reference to the assessor's report of last year it will be seen that it was urged to have a law creating a board of assessors.

I hope this suggestion may yet be acted upon in time to have the benefits of such a board for this general assessment. Unless it is done in the next [this] session of Congress all the defects of the present system will be fastened upon our citizens for three years more.

The last general assessment made the aggregate assessed value about 50 per cent of the true value of the property, when the law requires it to be the "fair cash value."

The tax levy at the last general assessment was in round numbers \$1,400,000; on 50 per cent valuation, at a "fair cash valuation," the levy would have been \$2,800,000.

It has been agreed, for the purposes of taxation, that one-third should be deducted from this cash valuation, accepting this basis, without admitting its correctness, it would have made a true levy of tax of \$1,900,000 as against the levy of \$1,400,000, a loss of revenue by inaccurate assessment of \$500,000 each year, and for the three years of \$1,500,000.

This will occur next year if the present way of assessing is continued.

To pick up twelve men at \$5 a day to assess "from actual view" every piece of property and every house in three months, even if they were experienced in our property values and competent in all other respects, and do it correctly, can hardly be hoped; but when men are appointed who have had no experience in locating, assessing, and determining values errors and mistakes of the gravest character must be the result.

If these errors and mistakes of assessments fell equally upon the taxpayers it would not be such a serious matter, but it works altogether against the small taxpayers and in favor of the large taxpayers. For instance, when the subassessor has to value ground worth from 5 to 25 cents per square foot he can't get far out of the way, but when the same man has ground worth from \$1.50 to \$25 per square foot he is entirely at sea. His mistakes here make the great differences in our general aggregate of assessment.

A property worth \$5,000 is generally assessed at about \$4,000, or within 80 per cent of its true value; a property worth \$100,000 is assessed at about \$20,000 or 20 per cent of its true value. Ground worth \$15 to \$25 per foot is found on our books assessed at \$3 to \$5.

Experienced and competent assessors would assess all property within 33 per cent of its true value; then rich and poor would bear an equal proportion of taxation. If this assessment should yield more revenue than is required, the rate of taxation might be reduced. It is the rate of tax, not a low, irregular, and unequal assessment, that invites investment.

I submit that the true and only remedy is a board of assessors who, after some experience, will be able to make a just and fair assessment, and beg to refer to a bill, submitted in my last report, to create such a board.

Another defect of the present system, and a most grievous one, is that any appeal from the assessment must be made and determined in July and August, when a large number of those interested are out of town, and failing in those months to have the assessment corrected it must remain right or wrong, for three years, not even the Commissioners having power to correct or change the assessment thus determined. The only hope is to get Congress to pass a bill of relief in each individual case.

Under the present system the annual assessment of buildings erected during a tax year is, necessarily, defective and imperfect, for want of time and skilled assessors to go over the entire District and examine critically these improvements.

A careful examination convinces me that over \$20,000 of tax is lost each year by buildings overlooked and not taken up for taxation.

These estimates and conclusions are based upon the city assessments; the county assessment is still more glaringly inconsistent and unjust.

This matter is of such a serious character that I hope a strenuous effort will be made to correct our present system of assessment before another general assessment, with its mistakes and errors, goes into effect.

The WITNESS. I might say right at this point that I am very happy in reading the evidence of the gentlemen who have appeared before the committee, to find that they are now coinciding entirely with my views. There is a notable change in the sentiment of those gentlemen, and a very delightful one to me.

Q. Do you think that property ought to be taxed entirely at its full value, leaving any variations to be in the rate?—A. I think that is the true way, sir. If you would ask me how I would do it, I would answer you in this way—

Q. I will ask you that question. How would you do it, Mr. Fish?—A. I say here (referring to a document), "the true solvent of the unequal and unjust system of taxation in this District is the creation of a permanent and competent board of assessors and a careful amendment of the law requiring the taxation to be at the cash value of the property when the assessment is made." This was recommended by me and met the determined opposition of those citizens who are well satisfied with the present arrangement, which taxes them at about one-fifth the value of their property and taxes the poor man on his home four-fifths.

Q. Well, this permanent board has been appointed, has it not?—A. I understand this board is permanent, but they will of course carry out the triennial assessments.

Q. Do you think the board in every way what you recommended in your report?—A. I think they are upright, honorable men. I believe they are competent. I think the time allowed them is not sufficient.

The CHAIRMAN. You do not know as to the result of their work yet?

A. No, sir; I know nothing about it. I think the plan they have started out upon to assess the property under adverse circumstances is entirely wrong.

Q. You know of that rule, then, that they adopted?—A. I have seen it in print as the rule.

Q. Other than that you know nothing against the board?—A. I believe they are honorable gentlemen.

Q. Are they poor men or rich men?—A. I suppose that Mr. Moore and Mr. Cook are rich men. I do not know Mr. Dawson personally.

Q. How rich?—A. I suppose they are worth—John F. Cook, I suppose, is worth half a million dollars.

Q. What is Mr. Moore worth?—A. I suppose \$200,000 or \$300,000.

Q. You do not know about Mr. Dawson?—A. No, sir.

Q. He is not a poor man?—A. I do not know anything about him.

Q. Do you think these men competent to earn salaries of more than \$2,500 a year in other business?—A. Well, I do not know. I would not like to answer that question. They are men of ability, or I think those two men are. Mr. Cook used to be collector of taxes.

Q. It is rather difficult to hire men of that grade at that salary, is it not?—A. Yes, sir; I think so.

Q. Do you know of any large fortunes being made out of real estate in the District of Columbia?—A. Oh, yes.

Q. Could you tell us the history of some of them?—A. I could not tell you the history of them. It is very difficult to get the history of any financial operation in real estate in this District, or anywhere else, I expect.

Q. You are not sufficiently familiar to name anybody who has made

a good deal of money out of real estate?—A. No; I suppose the California syndicate, Mr. Sharon and those gentlemen.

Q. Anyone else?

The WITNESS. It is rather a broad term to say "large fortunes."

The CHAIRMAN. Well, made money out of the increase in land values here?

A. I suppose Mr. Glover has made a good deal of money.

Q. The gentleman who testified here?—A. Yes, sir; Mr. C. C. Glover, of Riggs Bank.

Q. Where did he make it?—A. In the northwestern section.

Q. Where property has advanced rapidly in value in the last few years?—A. Yes, sir; it has advanced 400 or 500 per cent in the last seven years.

Q. You are speaking about land?—A. Yes, sir; entirely about land.

Q. What has advanced, the buildings or the land?—A. The land, of course.

Q. Have the buildings advanced much?—A. No; buildings are more expensive. There are more expensive buildings put on high-priced land.

Q. And buildings do not appreciate in value?—A. No; the assessment of buildings is pretty nearly approximately correct.

Q. The variations are mostly in land values?—A. Entirely.

Q. Exclusive of buildings?—A. Yes, sir; a man goes and looks at a piece of property on F street, for instance, and if he buys it the building on it is generally torn down; men do not take that into consideration; they value the ground. Of course if there was a fine building erected, like some of the recent ones, that would be added to the price per square foot, but ordinarily they take the ground and count the old improvements as nothing; tear them down. In fact, they would rather have vacant lots.

Q. Some improvements, then, that are assessed at a value, are really worth nothing and are an incumbrance on the ground?—A. Yes, sir; there are a great many operators in real estate who prefer having them off.

Q. And yet they are assessed at something?—A. Yes, sir; always.

Q. So that the assessment on a great many buildings is really more than it is worth?—A. Yes, sir.

Q. Take the average, it is not far from right?—A. I think as a rule it is pretty near right, except hotels and such places.

Q. How would you say assessments bear on small amounts, \$2,000 or \$3,000, as compared to some very expensive buildings here?—A. As I have said in my report, I think they are generally assessed at about 80 per cent of their value.

Q. Which class of property?—A. Small property.

Q. The buildings you are speaking of?—A. Oh, the buildings are always assessed at about the same. The way an assessor does when he goes around is to look at his plat book and see the depth of a lot, the number of front feet—

The CHAIRMAN. I am talking about buildings.

The WITNESS. I understand. Then he assesses the ground and he estimates the value of that building on it, and they get at the building pretty accurately in every case.

Q. Then these very large buildings you think they come at pretty closely?—A. They can if they are disposed to; if they wish to they can go to the contractor or builder and find out what it cost to build it. There is not much difficulty in getting at that.

Q. What would be the effect, in your judgment, of raising all the revenue from taxation on the land value and exempting improvements from taxation?—A. I will answer your question by reading: "The figures of the annual assessment of property for taxation in the District exhibit the absurdities of our tax laws so plainly that it is wonderful that sensible men can be found to patiently administer them, or a self-respecting body of taxpayers is willing to submit to them. According to assessment the total valuation of all the lands in this District is \$56,580,933, and of the improvements upon the same, \$58,901,456. Thus the houses in this District are said to be worth \$2,320,523 more than the land. If such a statement was made by any other business man than an official in any official tax report, he would be set down as an ignorant person, or as one desiring to deceive other ignorant persons." The whole system is perfectly absurd. Tax the land and leave out the improvements and we would have more revenue than we need.

Q. And at what rate?—A. At the rate they have now, \$1.50, we would have more revenue than we need.

Q. What would be the effect on the District if you were to remove this tax from improvements; would it encourage or discourage building?—A. It would encourage building, of course. That is beyond question.

Q. It would beautify the city?—A. Every house that goes up of course increases the beauty of the city and the values.

Q. And it would really enhance the land value, would it not?—A. Naturally it would.

Q. So that the land owners would get a large return from the taking of the assessments off of buildings?—A. I think so. It is an idea, this one tax scheme, that is not thoroughly understood by our people, and it would be a grave matter to introduce it without having them pretty well posted on it, I think.

Q. As a plain business proposition would it be an advantage to the people of the District to exempt improvements from taxation or not, in your opinion?—A. I think it would.

Q. Give us some of the reasons, please, that bring you to that conclusion?—A. It would stimulate building.

Q. What effect would it have on rents?—A. It would cheapen rents; it would bring unimproved property into the market.

Q. What effect would it have on old broken down and worn out fire-traps, such as are on F street and Seventh street?—A. It would replace them with better structures and with modern improvements. The trouble with the property on Pennsylvania avenue is that they pay high rentals for those old houses, and they have no modern improvements, no plumbing arrangements, no bath tubs, and conveniences that every modern structure is put up with now.

Q. Would it be an invitation to people who now live in surrounding villages to come back to Washington?—A. It would certainly do it. I expect that is one reason why people have to go into suburban villages.

Q. You do not care to name any other people besides those you have named, who have made money out of the rapid advance that you speak of in the land values in the District?—A. I could not name them; I think there are scores. Any one has made money who was able to buy property in the northwest, or F street, or Mount Pleasant, or on the heights anywhere about Washington and hold it about three or four years, or five or six years.

Q. In the last five years, in your judgment, what has been the increase in land values in the District of Columbia?

The WITNESS. Take the whole city?

The CHAIRMAN. Yes; not buildings.

The WITNESS. How many years shall I go back?

The CHAIRMAN. To any convenient date.

The WITNESS. (Referring to report of the Commissioners, 1891.) It is \$76,000,000, the land. I should suppose it had increased altogether at least 300 per cent, that is, taking the whole city.

Q. What does 300 per cent amount to in dollars?—A. In dollars it would make the ground about \$140,000,000.

Q. Do you think the ground value of the District to-day is about \$140,000,000?—A. I think more than that when you come to figure it.

Q. How much more?—A. Well, I suppose the land values in this District are worth at least \$200,000,000 to-day.

Q. You claim that the land value, in answer to my former question, is now \$200,000,000?—A. At least.

Q. When it was \$46,000,000 five years ago?—A. Five years ago it was only about \$46,000,000.

Q. That is an increase of \$154,000,000?—A. Yes, sir; that is 300 per cent.

Q. Now that increase has gone into somebody's pocket?—A. Yes, sir; into somebody's pocket, and it has not gone into the hands of the small property owners to a very large extent.

Q. The bulk of that has gone into valuable properties in the center of the town and the northwest?—A. Yes, sir; and the county.

Q. And those people who have made fortunes have made some share of that?—A. They have.

Q. And the aggregate, in your judgment, is at least \$150,000,000 in five years?—A. I believe so.

Q. What creates that land value?—A. Their speculation. I am not speaking now of true value. You asked me what created *that* value; simply speculation.

Q. Well, some of it was due to natural causes was it not—has not the city grown?—A. The true value of property is enhanced by the growth of a city, of course, and by the growth of its manufactures, which we do not have here; the increase of a city is the increase not only of population but the character of the population. A city may be made very much poorer by a large population if they were worthless immigrants, or Chinese, or anarchists.

Q. But this growth has been of average intelligence and respectable American citizens, and it has—A. (Interrupting.) I suppose the absolute growth, the true growth, of Washington, may be put down every year at 15 to 20 per cent in value on land.

Q. That is land value?—A. Yes, sir; land values, might be reasonably calculated, and I think for the future to be that much. I think that a man who would buy a piece of property in any eligible part of the city now at the present valuation, not the inflated values, that he could reasonably expect to get out 10 or 15 per cent on his money next year.

Q. And you think it is right to tax the improvements and the buildings that more than anything else helped to create these land values?—A. No; I do not.

Q. If you do not tax the improvements then, and you do put all the tax on the land value, is not that only fair and right, for the reason that land value absorbs and takes all of this increase?—A. That is so; I agree with you there.

The committee adjourned until Monday, May 2, 1892, at 11:45 o'clock a. m.

WASHINGTON, D. C., *May 2, 1892.*

The committee met pursuant to adjournment.

Present, the chairman, and Mr. Wadsworth; absent, Mr. Washington.

TESTIMONY OF ADOLPH DAMMANN.

ADOLPH DAMMANN, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your business?—A. I am a real-estate broker.

Q. Are you familiar with square 509 in the City of Washington, District of Columbia?—A. I am.

Q. What is the character of the improvements on that square?—A. They are all more or less two or three-story brick houses.

Q. Are there many vacant lots on the square?—A. There are some on New Jersey avenue, but the other section is mainly built up.

Q. It is pretty well built up with small homes?—A. Yes, sir.

Q. Will you give the committee your judgment as to the true value in lawful money of the land, exclusive of the improvements, in that square, commencing with lot 1, and going right through?—A. The average price would be \$1.25.

Mr. WADSWORTH. Where is that square located?

The WITNESS. At the intersection of New Jersey avenue and Fifth street, between Q and R streets.

Q. What is the value of lot 14?—A. Lot 14, as an individual lot, is worth \$1.50 a square foot; the others are \$1.25 up to the corner; the corner is considered more valuable; those lots are from 15 to 34, inclusive; lot 35, \$1.50; lots from 111 to 117, inclusive, \$1.25; lots from 41 to 55 are worth \$1 a square foot; from 100 to 110, \$1.25 a square foot; lots 140, 141, and 142, \$1.50; lots 143, and 144, \$2; lots 124 to 139, inclusive, \$1 a square foot; lots 118 to 123, \$1.25 a square foot; 73, 74, and 75, \$1 a square foot; 88, \$1.50 a square foot; from 89 to 98, inclusive, \$1.25 a square foot; between lot 98 and Warner street, \$1.50 a square foot; the public school property, \$1 a square foot.

The CHAIRMAN. Will you give the committee your judgment as to the true value in lawful money of the land, exclusive of the improvements, in square 374?

The WITNESS. Yes, sir.

The CHAIRMAN. Please give us the character of the improvements on that square first.

The WITNESS. Ninth street, to some extent, has business property on it, and the other section private residences.

The CHAIRMAN. Large or small homes?

The WITNESS. Medium-sized homes. Lots of 1, 30, 31, and 32, this ground on H street is worth \$4 a square foot. Lot 2, I consider just as valuable—it has an alley outlet—\$4 a square foot.

The CHAIRMAN. Do you think you could sell it at \$4 a square foot?

The WITNESS. Yes, sir, easily. Lots E, F, and G, 4, 5, and 6, \$3 a square foot; lot 7, \$3.50 a square foot; lots B, C, and D, \$4 a square foot; A, \$5 a square foot; all of lot 9, \$3 a square foot; lots 1, 2, and 3, near Ninth street, \$3 a square foot; lot D, original 11, corner of Tenth and I streets, \$4 a square foot; lots C, B, and A, fronting on I street, \$2.50 a square foot; lots 13 and 14, \$2 a square foot; lots 15 and 16, \$2 a square foot; lot 17, \$2.50 a square foot; lot 18, corner of

Ninth and I streets, \$5 a square foot; inside lots 19 and 20, \$4 a square foot.

The CHAIRMAN. I will ask you the same question as to square 369. I want you first to describe the character of the improvements.

A. The character of the lots, most of it, in fact all of it, consists of private dwellings.

Q. Small or large homes?—A. Medium homes. Some of them are very good ones.

Mr. WADSWORTH. Where is it located?

A. Between L and M and Ninth and Tenth streets. The corner of Ninth and L streets, 2,500 square feet of lot 1, \$2 a foot; the balance of lot 1, \$3 a square foot; lot 2, \$2 a square foot; lots H, I, and K, \$2 a foot; L, M, and N, 65 cents per square foot; lots 30 to 34, inclusive, 65 cents per square foot; lot 35, \$2.50 per square foot; lot 15, \$2.50 per square foot; lots E, D, C, and B, \$2.65 per square foot; the corner lot, A, \$3 per square foot; lots 35 to 40, fronting on Ninth street, \$2.50; lots 19 and 20, \$2.50 per square foot; lot 4, \$2 per square foot; lot 5, \$2 per square foot; lot 6, all except the corner, \$2 per square foot; the corner, 5,000 square feet, \$2.50; lots 7, 21, 22, 50, 51, 52, 53, 26, and 27, \$2 per square foot; of 10, \$2.50 per square foot; lot 11, average, \$2.50 per square foot; lot 12, \$2 per square foot; lots 28, 29, and 30, \$2 per square foot; lots 41, 42, 43, of 4, on the alley, 75 cents per square foot.

The CHAIRMAN. Would it be easier to buy or sell at the prices you are giving the committee?

The WITNESS. Easier to sell.

The CHAIRMAN. I will ask you the same question as to values in square 280. What is the character of it?

The WITNESS. That is between N and O and Twelfth and Thirteenth streets. It consists of private residences; some good ones on N street and on Twelfth street they are not so good; they are what you call medium residences. Lot A is worth \$3 per square foot; lots B, C, D, E, F, 3, and 4, \$2.50 per square foot; of 5 and of 6, and W, \$2.25; of 5 and of 6 on the corner of N and Thirteenth streets, \$2.75; lot b, 1 and 2, \$2 per square foot; lots 3, 4, and 5, and rear of lot b, 75 cents per square foot; lots E, F, and G, 75 cents per square foot; lot H, \$2 per square foot; lot i, \$2.75 per square foot; lots k, l, m, n, o, and p, \$2 per square foot; lot 12, \$2 per square foot; lot 13, \$2 per square foot; 2,000 feet of lot 14, on the corner of Twelfth and O streets, \$2.50 per square foot; balance of lot 14, \$2 per square foot; lot 15, \$1.75 per square foot; lot 16, \$1.50 per square foot; lots G, H, and I, facing on Twelfth street, \$1.50 per square foot; lot K, facing Twelfth street, \$2 per square foot.

The CHAIRMAN. Please take square 239 and value it in the same way.

The WITNESS. Square 239. It is between R and S and Thirteenth and Fourteenth streets.

The CHAIRMAN. What is its character?

The WITNESS. Private dwellings.

The CHAIRMAN. Large homes or medium sized?

The WITNESS. Medium sized only. Lot 1, \$2 per square foot; lots 2, 3, 4, and 5, \$2 per square foot; lot 6, \$3 per square foot; lots 7, 8, and 9, \$2 per square foot; lots 10, 11, and 12, \$2 per square foot; lot 13, \$3 per square foot; lots 14 and 15, \$2 per square foot; from lots 42 to 46, \$1.25 per square foot; from lots 47 to 51, \$2 per square foot; lots 34 to 40, \$2 per square foot; lot 41, \$2.50 per square foot; lots from 27 to 33, \$1.25 per square foot; lot 26, \$2 per square foot; lots 22, 23, and 24, \$2 per square foot.

The CHAIRMAN. Please take square 102 and value it in the same way.

The WITNESS. I beg to decline answering as to that square.

The CHAIRMAN. Very well. Are you familiar with assessments that have been made in the District of Columbia?

The WITNESS. I am to some extent.

The CHAIRMAN. Has the property been assessed at its true value in the past?

The WITNESS. Not at the present assessment standard; it has not been assessed at its true value.

The CHAIRMAN. About what proportion of its true value?

The WITNESS. I think it could stand from one-third to one-half more than it stands now.

The CHAIRMAN. You think it is assessed from one-third to one-fourth below its true value?

The WITNESS. Yes, sir.

The CHAIRMAN. Do you find the assessments pretty uniform—that is, do they assess all the property at about that value?

The WITNESS. No; they do not assess high enough. They assess private dwellings higher than business property.

The CHAIRMAN. Your judgment is that assessments heretofore have favored business property?

The WITNESS. Yes, sir, considerably.

The CHAIRMAN. Please express that in percentage. Business property is assessed at about what percentage of its true value?

The WITNESS. I do not think business property is assessed at one-third of its value.

The CHAIRMAN. Not over 30 per cent?

The WITNESS. No, sir.

The CHAIRMAN. And residence property at about 70 per cent?

The WITNESS. Yes, sir; about 70 per cent.

Mr. WADSWORTH. How do you account for that?

The WITNESS. Well, I do not know how to account for it, except that some parties may think that the business property is not as valuable as some of the residence property, which has kept the assessment lower.

Mr. WADSWORTH. What has been the rise in F street values within the last three years from the Treasury to Ninth street?

The WITNESS. I suppose ten times its value, that it was ten years ago.

Mr. WADSWORTH. One thousand per cent?

The WITNESS. Yes, sir.

The CHAIRMAN. Are improvements assessed, in your judgment, fairly well, or do they make the same discrimination between a small dwelling and a fine dwelling?

The WITNESS. No, sir; I think the improvements are assessed pretty fair, but I do not think the ground is. Land value is not assessed to its full value.

The CHAIRMAN. Land values in the District are increasing rapidly, are they not?

The WITNESS. Certainly.

The CHAIRMAN. Have you any idea how much a year they increase, taking the whole land values of the District of Columbia?

The WITNESS. No; I have not.

The CHAIRMAN. What percentage of increase would it be, in your judgment?

The WITNESS. They have increased from 10 per cent up every year, some of it; of course some sections have not.

The CHAIRMAN. And some increase very much more?

The WITNESS. Yes, sir; very much more.

Mr. WADSWORTH. You think the average would be 10 per cent?

The WITNESS. Oh, yes.

The CHAIRMAN. At least 10 per cent?

The WITNESS. At least 10 per cent.

The CHAIRMAN. Taking the whole District?

The WITNESS. Yes, sir.

The CHAIRMAN. Of course, improvements do not appreciate in value?

The WITNESS. No, sir; it is only land.

The CHAIRMAN. There must have been a good many big fortunes made out of that increase.

The WITNESS. There have.

The CHAIRMAN. Could you tell us some of the people who have made those fortunes?

The WITNESS. Well, take, for instance, a sale made within two or three years that I and some of my friends were interested in, the sale of part of Petworth, on Seventh street, where the first purchaser, sixty years ago, paid \$50,000 for it, and now they have sold it for \$1,300 an acre. I think they bought it at first for \$50,000, 183 acres. I have not calculated how much it is worth an acre, but you can calculate how much the percentage would be. I think they got about two hundred and six or seven thousand dollars for 183 acres.

Mr. WADSWORTH. Where is that?

The WITNESS. Facing Seventh street, opposite the Schuetzen Park; \$240,000 it was sold for.

The CHAIRMAN. Do you know any particular people who have made a good deal of money on this increase in land value; could you name some of them?

The WITNESS. Well, I would rather not answer that question.

The CHAIRMAN. We are very anxious to know.

The WITNESS. No, I do not know anyone particularly.

TESTIMONY OF J. TARBELL DYER.

J. TARBELL DYER, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your business?—A. Real estate broker.

Q. Are you familiar with square 509?—A. Yes, sir.

Q. What is the character of the improvements?—A. It is a dwelling-house square; medium-size dwelling.

Q. Pretty well built up?—A. Yes, sir.

Mr. WADSWORTH. What do you call medium-sized houses?

A. Houses that rent from say \$30 to \$40; when I say medium-sized houses I mean that the majority are two-story buildings.

By the CHAIRMAN:

Q. What do you call the small-sized houses?—A. The medium houses; the six-room houses are mostly what we term a medium house; among the three-story bricks are ten-room houses.

Q. It is typical of the smaller home property?—A. Yes, sir; houses renting from \$25 to \$30 a month.

Q. Will you give us the value of lots in this square, exclusive of improvement, estimating it at the true value in lawful money?—A. Lot 14, I think the ground is worth about 75 to 80 cents a square foot.

The CHAIRMAN. Yes, under ordinary circumstances.

The WITNESS. You do not want any fancy price; simply what the ground would sell for?

The CHAIRMAN. That is what we want.

The WITNESS. Lots from 15 to 34, inclusive, in square 509, are worth about 80 cents a foot; lot 35, about \$1 a square foot; lots from 111 to 117, inclusive, \$1 a foot; lots from 41 to 55, inclusive, 65 cents a square foot; lot 100, at about \$1.50 a square foot; lots 101 to 110, \$1.25 a square foot; lots 140, and 141, and 142, taken as a whole, about \$1.25 a square foot; lots 143 and 144, \$1 a square foot; lots 124 to 139, 75 cents a square foot; lots 118 to 123, \$1 a square foot; lots 73, 74, and 75, \$1 a square foot; the school property, as school property, I think would be worth the same, \$1 a square foot; lot 88, \$1.50 a square foot; lot 89 to 98, \$1.25 a square foot; then the corner lot on Warner street, \$1.50 a square foot.

Mr. WADSWORTH. What is the width of Warner street?

The WITNESS. It is 50 feet.

The CHAIRMAN. At the prices you are giving the committee would it be easier to buy or sell that property?

A. I think it would be easier to sell. That would be the selling price and is what I supposed you wanted.

The CHAIRMAN. Please value square 374 in the same way. Describe the character of the improvements first, if you please.

A. On H street there are all three-story brick houses, except one, a two-story brick house. They are tolerably large houses, that rent from \$60 up.

Q. Sixty dollars up to what?—A. There are some along there that would bring as high as \$1,200 a year; they are mixed on I street, some are two-story houses and some three, and some frame; on Tenth and Eleventh streets the same way; on Ninth street it is all business property; except on Ninth street it is all home property, medium-sized houses; some of the houses on H street are larger than medium. I value the lots as follows: Of 1, corner of Ninth and H streets, \$6 a foot; 30, 31, and 32, about \$4.50 a square foot; 2, E, F, G, 4, 5, 6, and 7, \$4 a square foot; D, C, and B, \$4 a square foot; A, \$4.50 a square foot; lot 9, \$3 a square foot; lots 1, 2, and 3, fronting on Tenth street, about \$3 a square foot; lot D, corner Tenth and I streets, \$3.50 a square foot; C, B, and A, \$2.50 a square foot; 13, 14, 15, and 16, I think about \$2 a square foot; No. 17, about \$2.25 a square foot; lot 18, corner, \$4 a square foot; lots 19 and 20, \$4 a square foot.

The CHAIRMAN. Take square 369. What is the character of the improvements there?

A. The improvements are mixed; on M street there are some fine houses, and on Ninth street some good ones; on L street there are a good many frame houses, and on Tenth street there are some frame houses. It is generally home property.

Q. There are some right good homes there, are there not?—A. Yes, sir; there are some three-story houses there.

Q. Please value that square as you did the others.—A. Lot 1, 25 feet on the corner, fronting on I street, \$3 a square foot; the balance of it \$2.50 a square foot; lots I and K, \$1.75 a square foot; lot H, \$2 a square foot; lots L, M, and N, 75 cents a square foot; lots 30 to 34, 75 cents a square foot; lot 35, \$2.25 a square foot; lot 15, \$2.25 a square

foot; lots E, D, C, and B, \$2 a square foot; lot A, \$2.50 a square foot; lots 35 to 40, fronting on Ninth street, \$2.50 a square foot; lots 19 and 20, \$2.50 a square foot; lots 4 and 5, \$2.25 a square foot; all except the 5,000 square feet on the corner of lot 6, \$2.25 a square foot, and the corner \$3 a square foot; lots 7, 21, 22, 50, 53, 51, 52, 26, 27, and 10, \$2 a square foot; lot 11, 25 feet on the corner fronting on M street, \$2.50 a square foot; balance of lot 11, \$2 a square foot; lots 12, 28, 29, and 30, \$2.25 a square foot; lots 41, 42, and 43, and of 4, 75 cents a square foot.

The CHAIRMAN. Take square 280. Please state the character of the improvements first.—A. The improvements on this square are two and three story houses; residence property.

Q. Medium size?—A. Some of the houses are very good and some are not so good; they are ordinary homes. The N street front are all nice houses and the balance of the square are not. Lot A, corner of Twelfth and N streets, \$2.50 a square foot; lots B, C, D, and F, 3 and 4 of 5, of 6, and W, \$2 a square foot; of 5 and of 6 on the corner, \$2.50 a square foot; lots B, 1, 2, 3, 4, and 5, and rear of B, \$2.25; lots E, F, G, and H, \$2.25 a square foot; lot I, corner of Thirteenth and O, \$3 a square foot; K, L, M, N, O, and P, \$2.50; lots 12 and 13, \$2.25; lot 14, \$2.25; lots 15 and 16, \$2 a square foot; lots G, H, I, and K, fronting on Twelfth street, \$2 a square foot.

The CHAIRMAN. Now take square 239, between Thirteenth and Fourteenth and R and S streets. The Washington City Orphan Asylum is on one corner. The R street front are what you might call good houses. On the north side part of the square is built up with two-story brick and part three stories, and on the S street side they are all two-story and three-story basement bricks. There are some small and some large houses there, of course. Lot No. 1, corner of Thirteenth and R streets, is worth \$3 a square foot; lots 2, 3, 4 and 5, \$2.25 a square foot; lot 6, on the corner of Fourteenth and R, \$4 a square foot; lot 7, facing on Fourteenth street, \$3.50 a square foot; lot 8, \$3 a square foot; lot 9, \$3 a square foot; lots 10, 11, 12 and 13, that is the asylum property, \$3 a square foot, taken right through; the S street fronts are worth \$2 a foot.

The CHAIRMAN. How deep is that?

A. Ninety feet deep with a 10-foot alley in the rear is worth \$2 a square foot; I should say the S street front of lots 14 and 15 to a 10-foot alley are worth \$2 a square foot; the Riggs street front of the same two lots, \$1.75; 47, 48, 49, 50 and 51 on S street, \$2 a square foot; lots 42 and 46 on Riggs street, \$1.75 a square foot; lots 34 to 40 on S street, \$2 a square foot; lot 41, \$2.50 a square foot; lot 26, \$2.25 a square foot; lots 27 to 33, \$1.75 a square foot; lots 22, 23 and 24, \$2.50 a square foot, facing on Thirteenth street.

Mr. WADSWORTH. I would like to ask you regarding values on I street. Take square 126, bounded by Seventeenth and Eighteenth and I and K streets; what would you value the lots on K street between Seventeenth and Eighteenth streets at, giving the values just as you did in the other squares? We will refer now to the Hopkins map?

The WITNESS. Lot A, corner of Seventeenth and I streets, is worth \$4 a square foot; lots A and B, \$4 a square foot; lots C to 9 and 10, inclusive, \$3.50 a square foot; lots 11, 12, and 13, corner, \$4 a square foot; lot 14 is worth about \$2.75 a square foot; lots 15 and 16, \$2.75; lots 40, 41, 42, and 43, about \$2.75 a square foot; the corner lot, 44, \$3 a square foot; lots 45, up to and including 27, about \$3 a square foot; lot 28, corner of Seventeenth and K streets and Connecticut avenue, \$3.50 a

square foot; lots 47, 48, 30, and the balance of the Seventeenth street front, and lot A, about the same, \$3.50 a square foot.

Mr. WADSWORTH. You would make a distinction, then, between the values on that square and those you made on Thirteenth and Fourteenth and F streets?

The WITNESS. Of course; they ask more money for this property. As I understand, you want what it would sell for. Now, asking and selling are two different things, of course. Any of this K street ground is in all probability worth more money than I have given; that is, it might bring it if it was pushed.

The CHAIRMAN. Are you familiar with square 199?

The WITNESS. Yes, sir.

The CHAIRMAN. What is the property worth; take square 199, lot 14?

The WITNESS. I should think about \$4 a square foot.

Mr. WADSWORTH. Are you familiar with square 102?

The WITNESS. Yes, sir. Square 102 is between Twentieth and Twenty-first and G and H streets.

The CHAIRMAN. Please describe the character of the improvements there.

The WITNESS. There are frame and brick buildings on Twentieth street, and they are the ordinary dwellings, medium dwellings; generally well built up. The G street front is generally well built up. Lots 1 and 2 are worth \$2.50 a square foot; lots 3, 4, 5, 6, A, and B, \$2 a square foot; lots C and D, \$2.25 a square foot; lots E and F, \$1.75 a square foot; lot 10, \$1.75 a square foot; the balance of F, E, and D, \$1.75 a square foot; lot C, frame house on the front of it, \$1.75 per square foot; lot 19, the corner, \$2 a square foot; lot 20, 31, and the balance of the H street front up to the alley, \$1.75 a square foot; the corner of Twentieth and H streets, \$2 a square foot; the balance of the Twentieth street front up to lots 1 and 2, \$2 a square foot.

The CHAIRMAN. You are familiar with the previous assessments made in the District?

The WITNESS. Yes, sir; tolerably so.

The CHAIRMAN. How has property been assessed—at its full value?

The WITNESS. In some cases it has been assessed at over its value, but generally under its value; about two-thirds of its value, I think.

Mr. WADSWORTH. That was the intention?

The WITNESS. Yes, sir.

The CHAIRMAN. Was that done?

The WITNESS. I can not answer.

The CHAIRMAN. Do you see any discrepancy between business property and residence property in the valuation—in the assessed values?

The WITNESS. I have not noticed particularly.

The CHAIRMAN. Do you think the values about the same in former assessments—relatively the same?

Mr. WADSWORTH. In proportion to their real value?

The WITNESS. I presume they were, although I never examined into the assessments at all.

The CHAIRMAN. Land values have increased rapidly in the last few years in the District, have they not?

The WITNESS. They have not increased, I think, in the last couple of years. I think they are about what they were.

Mr. WADSWORTH. Are they not a trifle lower than they were five years ago?

The WITNESS. The prices are not, but the owners ask more; property is not lower than it was five years ago.

Mr. WADSWORTH. The actual sales?

The WITNESS. The actual sales; yes, sir.

The CHAIRMAN. Take the whole District; land has not depreciated?

The WITNESS. No, sir.

The CHAIRMAN. It has appreciated more in some years than others, but taking it for the last five years?

The WITNESS. I think property is on a good, sound, healthy basis. I do not think values have depreciated at all.

The CHAIRMAN. Have they not appreciated, as a whole?

The WITNESS. I think they have.

The CHAIRMAN. What percentage a year?

The WITNESS. I could not answer that exactly.

The CHAIRMAN. Do you know of any fortunes made out of real estate in the District?

The WITNESS. Most everybody has dabbled into it.

The CHAIRMAN. Made money by the appreciation?

The WITNESS. Yes, sir.

The CHAIRMAN. Can you name anybody who has made money out of real estate in the District?

The WITNESS. I would rather not specify.

The CHAIRMAN. Why is it that you do not want to answer that question?

The WITNESS. I do not think that, as a real estate man, I have any business to name people; but a good many people I know have made a good deal of money.

Mr. WADSWORTH. It is the custom to keep it secret, is it?

The WITNESS. Customers of mine have made money out of investments, and I really do not think I should answer your question.

The CHAIRMAN. You know the fact exists, but you do not care to specify?

The WITNESS. Yes, sir; but I do not care to specify.

The CHAIRMAN. Improvements do not appreciate, do they?

The WITNESS. No, sir.

The CHAIRMAN. Do they depreciate?

The WITNESS. I think they do.

The CHAIRMAN. You think the assessed value of improvements is more nearly the true value than the assessed value of land?

The WITNESS. I think it is, yes, sir, because you can get at the value of buildings much easier than you can the value of land, as by inspecting permits, or seeing the contractor.

The CHAIRMAN. Do you think that small homes are assessed at more nearly their full value than large business blocks?

The WITNESS. Yes, sir.

The CHAIRMAN. Why is that?

The WITNESS. Do you confine yourself to large business blocks strictly, or do you include large dwellings? I think that the ordinary run of assessors can get at the valuation of the ordinary property, medium-sized property, easier than the other. If we had assessors who were thoroughly posted in the business—if they were real estate men and made a business of it, and were perfectly familiar with all the different characters of properties—then they might arrive at it; but no man can go into the office here and stay for a year and give a correct basis for assessment.

The CHAIRMAN. You think the system is wrong?

The WITNESS. Yes, sir; I think there ought to be a permanent board of assessors, not for a year or two, but to stay until they understood it thoroughly.

The CHAIRMAN. Do you think every three years often enough to assess land values?

The WITNESS. Yes, sir.

The CHAIRMAN. Are there not very great changes in certain localities in three years?

The WITNESS. In some cases.

The CHAIRMAN. And to the extent of that appreciation some people would escape part of the tax they ought to pay?

The WITNESS. Yes, sir.

The CHAIRMAN. But not if it was made every year?

The WITNESS. Unless you do as I suggest, have this continuous board of assessors, men perfectly familiar with all portions of the city.

The CHAIRMAN. Then if a section of the city increased very rapidly ought they not to raise it at any time?

The WITNESS. They should be in a position to do it at any time.

The CHAIRMAN. A continuous assessment in your judgment would be better than this periodical assessment—that is, raise it whenever the occasion requires, and have a permanent board to do it?

The WITNESS. I think it would be better to have a permanent board and a graded rate of assessment.

The CHAIRMAN. A permanent board before whom evidence could be produced, showing the true value of property from time to time would, in your judgment, be a better plan than the one we have now?

The WITNESS. Yes, sir.

The CHAIRMAN. Is it not a fact that some property in the District, to your knowledge, has been assessed at 10 or 20 per cent of the value that it sold for soon after the assessment?

The WITNESS. Yes, sir.

At this point the committee took a recess for thirty minutes.

AFTER RECESS.

The committee reassembled. Present as before.

TESTIMONY OF C. B. HEMINGWAY.

C. B. HEMINGWAY, a witness, having been duly sworn by the chairman, testified as follows:

The CHAIRMAN. What experience have you had, Mr. Hemingway, trying to secure prosecutions under the present law in cases where the assessors have in your judgment willfully violated the law in regard to assessments?

The WITNESS. Would you like to have me state the whole matter from beginning to end, covering all the points?

The CHAIRMAN. I would rather you would refer to the points separately, and put it in concise form, so that it can be read more easily.

The WITNESS. My attention was first called to the inequality in assessments in the District of Columbia about six years ago, when I bought a small piece of property in the suburbs. I gave \$800 for it. That property I had purchased through one of the leading real estate agents of the District, Thomas J. Fisher & Co. It had been advertised for nearly a year, I believe, and it was sold by a wealthy

stockbroker in New York, who was merely selling for the reason that he was dissatisfied with the investment and thought he could handle his money better in other ways—it was not a forced sale. So that all the circumstances tended to show that the price I paid for the property was about as near the true market value as could be had. During the same month in which I bought the property, I think, the assessors went over the ground and levied the assessment. The return they made was \$1,356. The price I paid was \$800. I appeared before the board of equalization and appealed against their assessment and they cut it down to \$1,025, leaving it still \$225 higher than I had paid for it.

The CHAIRMAN. At the time?

The WITNESS. At that time. That did not seem to me to be right. About that time I had a conversation with Mr. George C. Henning, who was the silent member of the firm of Saks & Co. He incidentally mentioned that the price they were paying for that lot was in the aggregate about \$11,000 a year merely for the ground on which the Saks building stands, and afterwards, I may incidentally remark, I examined a list in the record office and found that that was correct. That property when I went before the board of equalization was assessed, I found, only about \$4,000, the annual value of the lot, or in other words 15 or 20 per cent of its value. Now those two cases coming together called my attention very strongly to the fact that there was an inequality, and from then I began to investigate matters. Three years later, in March, 1889, after the twelve assessors had completed their returns and the board of equalization had convened for the purposes of hearing complaints, I went before the board and made an examination of the books in a number of cases, and found that there was a great underassessment in nearly all cases that I examined. Business properties were largely underassessed and most residence properties were assessed nearly to their true value, and in some cases there was an overassessment. I then filed an appeal, and I may say just here that the law provides that “the board of equalization shall hear such complaints as may be made in respect of said assessments.”

Now, under that provision I sought to file appeals with a view to having them considered. In those appeals I stated facts in regard to true value of the property. The law provides that property shall be assessed at its true value. It would seem to me that the assessment at only a very small percentage of the market value as shown by sales, was certainly not a compliance with the law, but, on the contrary, a direct violation of it. I think I filed something like fifteen appeals, covering, perhaps, 1,000 pieces of property. They were all cases in which by recent sales as reported in the newspapers the true value of the property was shown. I received a letter about that time from the clerk of the board of equalization, asking me whether I had filed those appeals as owner, as agent for the owner, or as acting for the owner. I replied that I had not; that I had filed the appeals as a citizen, doing what I had a clear right under the law to do. Those appeals were ignored. At any rate, after the board of equalization had dissolved, the assessments remained as originally returned, except that in some cases the assessment had been put down still lower than the return against which I had appealed.

I then wrote a letter to District Attorney Hoge, calling his attention to the facts in one case. I selected the case of the Firemen's Insurance Company, on the corner of Louisiana avenue and Seventh street. The property had been sold about eight years before at a given figure.

There had been no depreciation since; on the contrary the value of land in that neighborhood had greatly appreciated, and the return made by the assessors as to that particular lot was only about 18 percent of the price at which it had been sold eight years before. That seemed to me to be a conspicuous violation of the law and that when after their attention had been called to the fact, they had refused to raise the assessment, that they had then violated the law in having knowingly assessed property at less than its true value, as prescribed by law. The district attorney told me that he would have to wait until his assistant, Mr. Randolph Coyle, who was out of the city, should return, as he would need his advice. I waited, and when Mr. Coyle returned, during the interview I had with him, he asked me whether I could prove collusion, corruption, or bribery on the part of any of the assessors. I told him I could not. Then he stated he thought I could not make a case against them. I told him I did not propose a prosecution under any general statute, but under the assessment law itself, and pointed out the specific clauses of the law I proposed a prosecution under, but he did not think a conviction could be secured. That ended the matter for the time.

Later, I called on Assistant District Attorney Armes at the police court and stated the facts to him. He undertook to go over the facts in regular order and to consider them in the light of the law, and finally came to the conclusion that subassessors were liable to indictment only for acts committed in their individual capacities, that is, in the primary work of making returns, and that after the first Monday in June while acting as a board of equalization, the phrase in the law, "in their opinion," gave them such a wide latitude for action that it would hardly be possible in any case to secure conviction under the penalty laws of the statute.

Now, just here, I wish to say that it seems to me if that is true—I doubt that it is true, I may add—but if that is true, then there you have a law under which it would be impossible in any case to secure a conviction. Even if an assessor were to assess property at 1 cent a foot that is worth \$10 a foot, you could not secure a conviction; that must be obvious. Later I went before the grand jury and stated the facts. They excused me for five minutes, or for a short time, while they would consider what I had to say—

The CHAIRMAN. What you had said.

The WITNESS. Yes, what I had said, and then without recalling me, excused me until again recalled. I am waiting to be recalled.

The CHAIRMAN. How long ago was that?

The WITNESS. Three years. So it is apparent—

Mr. WADSWORTH. They had to take the advice of the district attorney, probably; he was their advising officer.

The WITNESS. I think they took the advice of Assistant District Attorney Thomas in that case; I am not positive. One of the assistant district attorneys, however.

Mr. WADSWORTH. You wanted to show by your testimony that there was no remedy for unjust or erroneous assessments?

The WITNESS. That is my opinion of the law as it is to-day.

Mr. WADSWORTH. What efforts, that you know of, have been made in the District to correct those unjust assessments? What efforts have been made to correct by law those unjust assessments?

The WITNESS. Well, a great deal of agitation has been carried on. I have had a great deal to do with it myself. I have written many letters to the Commissioners and to the newspapers calling attention to the defects in the law, and pointing out what appear to me to be remedies for those defects. Among other things in the way of agitation,

the *Critic*, I think in March, 1890, undertook to call the attention of the public to the fact that there had been a great many unequal assessments, and detailed a reporter for that purpose, and he worked for a week or two on the matter, and during that time they published some twenty or thirty columns in regard to it, pointing out hundreds of unequal assessments, and stating among other things such things as this:

The most shameful feature of this fact is that this money which the Treasury was deprived of represents just that many dollars saved to the pockets of the wealthiest and most powerful property owners, and was not a saving to the people at large. The citizens at large paid as a rule an assessment upon almost the actual value of their property. The small land owners, the citizens of moderate means, the artisans clerk, merchant, or laborer, who owns his humble home had it assessed at nearly its "true value," as the law directs.

I might say that they published a statement at that time to the effect that 2,134 citizens had claimed an overassessment, and that values were reduced in 1,081 cases. One of the assistant assessors interviewed at that time, Mr. Rheem, stated: "Where one poor man requested a reassessment of his property and a reduction thereof, ten rich men came before us showing you the character of those appeals."

The CHAIRMAN. Do land values appreciate in the District of Columbia from year to year, that you have noticed in the past?

The WITNESS. Considerably.

The CHAIRMAN. What percentage, in your judgment?

The WITNESS. Well, I never thought of it in that way, and I do not know that I could state the rate without making a calculation.

The CHAIRMAN. But it is a very large sum, you think?

The WITNESS. I believe that the appreciation of land values in the District of Columbia has been greater than any other eastern city.

The CHAIRMAN. In percentage how much?

The WITNESS. I have nothing on which to base such a statement.

The CHAIRMAN. Do improvements appreciate?

The WITNESS. Not at all; they depreciate as they grow older.

The CHAIRMAN. Have there been large fortunes made out of the appreciation of land values in the District?

The WITNESS. I believe so.

The CHAIRMAN. Do you know any cases?

The WITNESS. I have read in the newspapers at times of large sums having been made by particular parties.

The CHAIRMAN. Can you name them?

Mr. WADSWORTH. You do not know of your own knowledge?

The WITNESS. This is merely general information; I suppose the same knowledge that anyone would have on the subject.

Mr. WADSWORTH. It is not personal knowledge?

The WITNESS. No, sir.

The CHAIRMAN. Did you hear the testimony of Mr. Samuel Phillips?

The WITNESS. Yes, sir,

The CHAIRMAN. He proposed a plan of taxing rental value rather than market value.

The WITNESS. I am aware of that.

The CHAIRMAN. What would be the effect of carrying out the plan as suggested by Mr. Phillips and Mr. Warner, who gave the same testimony?

The WITNESS. I believe the proposition contains a true and scientific basis of assessments. I believe that under such a plan we would guard against the extraordinary speculative values that were shown for a time, and which are in reality unstable. A price may run way up to an extraordinary altitude and not stay there.

The CHAIRMAN. What would be the effect on the general improvement of property in the District under his plan; would it offer an incentive, or not, to improve property?

The WITNESS. His plan would result in the assessment of all lands on the basis of their true value, and that assessment I believe would be in the interest of the District; by that I mean of the whole people. It might be against the interest of some particular land owners, but they do not constitute the whole body of the people by any means. My interest and sympathies, I might say, go rather to the people who have to work for a living instead of the land owners and when I speak of the interests of the District I rather refer to that class. The way in which that would be brought about is that any increased tax that falls on the value of the land tends to reduce the selling price of that land; consequently, if all land values in the District of Columbia should be assessed at their true market value, a greater burden of taxation——

The CHAIRMAN. He proposed an assessment at their true rental value. You said true market value.

The WITNESS. I believe they are identical, rental value and market value.

The CHAIRMAN. Annual rental value and market value you believe are identical?

The WITNESS. That is, one is the root of the other.

The CHAIRMAN. The product of the other?

The WITNESS. I believe that market value is the product of rental value. It is usually believed to be the other way; that is, many people believe it to be the other way. I think the selling value of property rises out of its rental value, mainly modified by the speculative prospects.

The CHAIRMAN. How many times the rental value would be the market value of land alone?

The WITNESS. Twenty times, in my opinion, in this city and under present conditions.

The CHAIRMAN. Ascertaining the rental value and multiplying it by twenty would give you, under ordinary circumstances, the market value?

The WITNESS. I think so.

The CHAIRMAN. And his plan was to take the rental value and tax a certain percentage of that. In the main you indorse what those two gentlemen said on the subject, do you?

The WITNESS. Exactly.

Mr. WADSWORTH. Take a piece of property renting at \$2,000, twenty years would make it \$40,000.

The WITNESS. What does the property consist of, land and improvements?

Mr. WADSWORTH. You are making a proposition that the rent for twenty years would be equal to the value of the property.

The WITNESS. The ground rent exclusive of the improvements. I think land owners generally expect to get 10 per cent back on their improvements.

The CHAIRMAN. Then, taking the tax off of improvements would stimulate improvements?

The WITNESS. Very much.

The CHAIRMAN. And this plan of those two gentlemen was indirectly to take it off of improvements, was it not?

The WITNESS. So I understood at the time.

The CHAIRMAN. Would not what he proposed have that effect?

The WITNESS. I think he hardly realized the full effect of what he

did propose. I want to say here that there appears to be in the minds of certain citizens of the District, mainly large land owners, a theory that if property were assessed at its true value and a lower rate of taxation adopted, that Congress would then seek to throw the whole burden of the expenses of the Government on the District, and that fact has been one of the most important in my opinion in keeping down assessments. The Commissioners, I am informed from a number of sources, themselves have generally held that opinion, and have really encouraged the underassessment of property.

The CHAIRMAN. So as to keep the rate up.

The WITNESS. So as to keep the rate up. In other words, there has been a deliberate intention on the part of nearly everybody who has had any connection with the matter to make a return that would deceive Congress as to the true value of property in the District. Of course, in that I am stating my individual opinion. As to the true value of property in the District. Now, I believe that a tax levied on real estate at its true value would fall most heavily on the most valuable lands in the District of Columbia, and that the effect of that would be to force down prices. I see nothing in that fact, however. I see that these people who desire to improve the city and build it up would be able to purchase land at a lower price, and consequently smaller capitals could be applied to the development of the city. The Critic, at the time I mention, published something like twenty or thirty columns on the subject of this unequal assessment, and showed a large number of cases of unequal assessment; had interviews with all the assessors, in which they showed their extraordinary ideas that had controlled them in the making of assessments. Here is one little instance that I think important in this connection. In February, 1889, the assessors were about to commence an assessment of property for taxation in the District, and believing, as I did, that one very important factor in the underassessment of property was the false instruction that had been given to the assessors, I applied to the District Commissioners for a copy of the instructions that had been prepared.

One clause in these instructions was substantially this, as I remember it: "This," that is to say, the value to be assessed, "must be construed to mean what the property would bring in cash at a public sale. We consider recent sales in the same locality and take off 20 to 33 per cent." The law requiring property to be assessed at its true value, it would seem to me that these instructions were in direct conflict with the law and a violation of it. I wrote a letter to the Commissioners, calling attention to the fact and pointing it out as forcibly as I could, and suggesting incidentally a remedy. No notice, that I am aware of, was taken of my letter, but shortly afterwards, on March 12, new instructions were issued, in which that provision had been substituted, as follows:

The assessment of real property in the District of Columbia must be made at the true value in money. This must be construed to mean, in your best judgment, what the property is really worth when you assess it.

That was issued by Mr. Fish, I believe, and shortly afterwards he was discharged. Last winter I prepared a bill, which was introduced in the House by Mr. Butterworth, the intention of which was to provide a different basis of assessments and a different mode and different machinery for the purpose of accomplishing it. That bill never was considered, for the reason that it would have been useless, inasmuch as politics had forced all District matters to the wall, and no District matters could be considered.

But I appeared before the District Committee in support of the bill, and at that hearing I called attention to the following facts, which have some bearing on the question now before the committee. Under the law as it stands it would be impossible to secure a conviction for any cases of underassessment, no matter how obvious it might be, because one could not know that the return of a piece of property would be at an undervaluation, and by the time the fact could be officially ascertained the individual responsibility of the under assessor would have ceased, and recourse would have to be had to the board of equalization, who being allowed latitude of "opinion," the integrity of their conclusions could not be legally impeached. This statement is not a mere supposition, but is proved by my own experience. A certain piece of property was last year returned for assessment at only a small fraction of its real value (probably one-fourth), as shown by the price at which it sold eight years before. I appealed in the way prescribed by a law, but the appeal was ignored.

* * * The board of equalization was no doubt originally intended to equalize the varying dues of the individual returners of the assessment, and its function as an appeal board was probably subsequently added; but it has about ceased to exercise its original function of its own volition, and now confines itself to hearing appeals for a reduction of assessment. [They refused to consider appeals for an increase of assessment.]

In the exercise of this function assessors are subjected to the heaviest pressure that wealth, influence, and special interest can impose, and deceived in ways to devise which the ingenuity of the sharpest intellects had been taxed; and even though honest, it is hardly possible that weak human nature could withstand such pressure, coming as it does from the "best citizens," or discover the fraud. And when the law is such that evasion and connivance can not be punished what is to be expected? The system has been discredited by the experience of all times and places and should be abolished. Where lands are rapidly advancing in value, as they are in some localities, justice demands that assessments should be made oftener than every three years. By a proper system the assessment of every piece of property in the District could be reconsidered annually at but a trifling cost compared with the immense advantages gained.

Equality of assessment will never be secured as long as responsibility is divided and a specific method for ascertaining values not prescribed by law. There must be a responsible head—one officer who shall have full control of the matter and be wholly accountable to the appointing power and to the law for his official conduct. This is the principle that is recognized throughout the whole governmental system, with the one exception in question; and this is the one office of all others that should be divorced from outside influence.

I propose that the work of assessment be left entirely to the assessor, and that he be held wholly responsible for the proper performance of that work, and especially free from interference from any outside quarter; that he have under him such clerical force as is necessary and permanent assessors to do fieldwork; that appeals against acts of the assessors shall be made to the assessor, who shall have the ultimate decision of those appeals, and shall have to assist him in these and other questions that may arise competent assistant assessors. With the ultimate responsibility thus placed on one officer, he could be removed whenever his incompetence or official misconduct was shown to the appointing power; and under such circumstances it is probable there would be but few occasions for citizens to appeal to the courts. * * *

The selling value of an interest bearing subject consists of a capitalization on the basis of the current rate of interest of the profits likely to accrue from its ownership. The actual price may or may not approximate the current selling value, as that depends on the peculiar views of the purchaser and seller. A purchaser might pay much more than the current value, or a seller might sell for much less than the current value, but as a rule the actual price is a fair indication of the real value. To ascertain the current selling value of land take its rental value and deduct therefrom the tax, and what remains will be the net rent; and, if there is no prospect for an increase or decrease in value, the net rent represents the current interest on the capitalized or real selling value. But if there is a prospect of an increase in value, as there is with about all land in the District, then an allowance must be made to cover such speculative prospect.

The WITNESS. Well, Mr. Chairman, I have summed up what seems to me to be the defects in the present law, and the remedies; I have noted twelve points. They are these: Triennial assessments. A period of three years is too long with values changing as rapidly as they do in the District. The remedy for that is annual assessments. Another defect is indefinite requirement as to what shall be assessed, "true value," in other words, a quantity in regard to which it is impossible to secure a uniformity of opinion, as shown by experience and by the testimony taken before the committee. The remedy for that is specific requirements as to what shall be assessed; in my opinion the best phrase is the "highest current rental value"; the assessment to be returned as Mr. Phillips suggests against rental value instead of selling value because this is a fact that is determined and constantly redetermined as to more than half the improved property in the District, and it furnishes the largest basis of fact on which to make the return. Sales are comparatively scarce, but rents exist in every square in the city. Another defect is that the assessment is made a matter of opinion or judgment. I believe that so long as latitude of opinion is allowed, so long will you have unequal assessments. The remedy is that the assessment shall be a matter of fact in all cases where the fact is determinable, and to use judgment in cases where the fact is not determinable.

Another defect is divided responsibility. No particular person is responsible for any particular act. The remedy for that, of course, is fixed responsibility, each act to be identified with the particular person. Another defect is that the penalty clause can not be enforced owing to indeterminate responsibility. The remedy is a penalty clause that can be enforced by reason of the determinate responsibility. Another defect is secrecy with which everything was done. Everything is done behind closed doors. The remedy is the utmost candor with the public; everything to be done open to public inspection. Another defect, an irresponsible board of equalization, who merely find opinions. The remedy, a single officer who is to determine questions of fact. Another defect, the practice of viewing property as the most important fact in determining values, which practice I believe to be a hippodrome and a farce. The remedy for that is a practice of ascertaining from those who know, under oath, the facts as to the actual rental value wherever it exists, and by comparison with neighboring rents, where it does not exist as a matter of fact. Another defect, the fact that assessment lists are not kept in such shape and do not show such facts as would enable an ordinary person to judge whether the assessment was fairly made. The remedy for that is that assessment lists should contain all facts necessary to enable any person not an expert, and without reference to any other source of information, to determine whether an assessment was fairly made.

Another defect, that the board of equalization refuses to consider appeals from citizens against the under assessment of property. The remedy, that any citizen shall have the right of appeal against any improper assessment, either high or low. Another defect, that by reason of fixed salaries, being subject to insidious influence from powerful and interested parties and other causes, coupled with inadequate penalty clause, the interest of the assessors lie in the direction of low assessments. The remedy for that, of course, is obvious. The last defect I have noted is that even if an assessor were convicted for under assessment there is no provision of law to punish him. The worst that could be done would be to fine his bondsman to the extent

of \$1,000 if there were five or more violations of law. The remedy for that is that no bond shall be required, but that in case of an under assessment the responsible party may be both fined and imprisoned.

Now, these being the defects in the present law the question arises, what kind of a law can we have, what must we avoid in getting a new law? It seems to me that one of the things to be avoided is the arrangement of pay in such a shape as that the interest of the assessor shall be in the direction of an assessment up to the true value. I believe that if property is to be assessed at its selling price, that being an indeterminate quantity to a large extent, that it would be well to pay assessors a percentage on the aggregate of the return. In that way their interest would lie in the direction of getting up to the full value.

The CHAIRMAN. Don't you think it would be well to have some officer charged with the duty of bringing these facts before the assessors?

The WITNESS. If you will permit me I will answer that further on. I have an answer to that particular point. I do not think it would be well to have a system by which, in order to get information as to property values, it would be necessary to have our citizens proceed to a given point in order to get that information. That, it seems to me, would involve extraordinary expense, labor, and time, expense to the Government, expense to the citizen. If assessments are to be levied on the selling value of real estate in the making of assessments, there are three facts that should be noted in every case. Those facts are, first, the last price at which the property sold; second, the cost of improvements; third, the present actual rent. Now, there are 46,000 pieces of property that are improved in the District of Columbia, I believe. More than half of these are under rent. Just think of the enormous cost of requiring those 23,000 tenants to come to a particular point, before a court, for instance, to testify as to the rent they are paying, and just think how much easier it would be, if you have an officer with the same power as that court, not an officer but a number of them, to go around and make a systematic canvass of the District; meeting these people at their homes and there taking in a few minutes with each person, the facts to which they would testify if brought before a court and which would require hours of their time, with the expense of a court officer to proceed to their homes and back again, to summons them.

Another thing, I do not believe that the levying of assessments is a matter that requires the exercise of extraordinary ability. I do not think latitude of opinion, to any great extent, should be permitted in making assessments. On the contrary, it should be the principal duty of assessors to collect facts relating to values instead of reaching mere opinions by viewing property. Therefore, as the quality of ability required of an assessor in order to reach the best results in the best manner is not high, I think a compensation of \$1,600 per annum would be ample, and I regard a salary of \$2,500 or \$4,500 as excessive and absurd.

Mr. Chairman, I have prepared a bill which embodies my idea of a proper assessment law, which I would like to have spread upon the record.

The CHAIRMAN. The stenographer will incorporate the proposed bill in the record.

The bill referred to is as follows:

For five assistant assessors, at \$1,600 per annum each, \$8,000.

That real estate in said District shall be annually assessed for taxation at its highest current annual rental value, and the Commissioners shall annually fix the rate of tax.

That it shall be the duty of said assistant assessors to proceed each year through every part of said District and to require the tenant, agent, or owner of each piece of real estate under rent to state under oath the full consideration payable as rent; and they shall also determine, by comparison with adjacent or the nearest neighboring lands that are improved and bearing the highest rent obtainable, the highest current annual rental value of all lands not under rent obtainable, and they shall make return thereof to the District assessor.

That the highest current annual rental value of real estate shall be considered to be the highest annual rent which could be obtained for its use during the current year in which assessed if improved with improvements of a value equal to the average value of the improvements on lands of the same class (business or residence) in its immediate neighborhood.

That each piece of land shall be assessed at a sum equal to the highest current annual rent obtainable if improved with an improvement equal in value to the average value of the improvements in its immediate neighborhood.

That any real estate containing improvements of a value in excess of the average value of the improvements of its immediate neighborhood shall not, by reason of said fact, be assessed at a sum in excess of the sum laid on the nearest neighboring lands of equal site value.

That where land is bearing rent, and it appears by comparison with the actual rents payable for the nearest neighboring lands, that the rent payable is the highest rent obtainable (excepting from consideration those actual rents which are notably inadequate as the highest rents obtainable) then such rent shall be considered to show the highest current rental value of the land. But where it appears by such comparison that such actual rental is notably inadequate as the highest rent obtainable, then such actual rent shall be ignored as a factor in determining current rental values.

That the aggregate of the assessments laid upon all improved real estate in said District which is bearing the highest rent obtainable shall not be less than the aggregate of the annual rents payable therefor; and the aggregate of the assessments laid upon the improved real estate that is bearing the highest rent obtainable located upon the opposing sides of any two adjacent squares shall not be less than the aggregate of the rents actually payable for said real estate.

That where land is not bearing rent, or is rented for a notable inadequate consideration, as shown by comparison with the rents payable for the nearest neighboring lands, its highest current rental value shall be determined by comparison with the highest current rents payable for the nearest neighboring lands, in said comparison making due allowance for relative size and site value.

That all valuable considerations which accrue to an owner in consideration of tenancy in real estate shall be held to be rent; and where the consideration payable to an owner includes consideration for values other than rent (as, for instance, artificial supply of water and light and heat, and permanent crops), then such consideration, where determinable, shall be deducted from the total consideration payable, and the remainder shall be held to be the actual rent payable.

That each tenant, owner, or agent of an owner of real estate in the District of Columbia shall give to the District assessor, or to any assistant assessor, information, under oath, as to facts required under the provisions of this act.

That it shall be the duty of the District assessor to prepare each year an assessment list in tabular form showing facts determined pursuant to the provisions of this act as to each piece or parcel of real estate in the District of Columbia, and said list shall show, besides the usual facts, the streets or highways on which each lot is located and the number assigned to each house thereon, the front width and depth of each city lot and number of square feet contained therein, or number of acres contained in each tract, the actual annual rental payable for land and improvements, or the actual rental payable for land if exclusive of improvements, and a column of "remarks" which shall make such explanations of apparent discrepancies or other facts as may be necessary.

That on the first Monday in March of each year hereafter the District assessor shall report to the Commissioners an assessment list prepared in accordance with the provisions of this act, and said list shall be the basis of taxation for the current year in which so reported; and hereafter all taxes shall be due and payable on the first Monday of May of each year.

That the assessment list which shall be in course of preparation, and the assessment list, which shall be the basis of taxation for the current year, shall, during business hours, be accessible to the public for the purpose of inspection.

That any person having knowledge of the fact that any piece or parcel of real property in the District of Columbia is assessed or has been returned for assessment in violation of the provisions of this act may file a statement of the facts, under oath, with the District assessor, who shall consider said statement and take such action thereon as may be proper; but any further appeal or protest against the de-

cision of the District assessor must take the form of an action at law in the courts of justice.

That the District assessor or any said assistant assessor, in the discharge of any of the duties devolved upon him or them by any provisions of this act, may administer all necessary oaths or affirmations. He or either of them shall have power to summon the attendance of any person to be examined under oath touching such matters and things as he or either of them may deem advisable in the discharge of said duties; and any member of the Metropolitan Police force, or constable of the District, may serve subpoenas in this behalf. Such fees shall be allowed witnesses so examined, to be paid out of the contingent fund of the Commissioners, as are allowed in civil actions before justices of the peace, except that no fees shall be paid to owners of property concerning which they have been required to testify. Any person who shall knowingly make false oath or affirmation shall be guilty of perjury, and, upon conviction thereof, be punished according to laws in force for the punishment of perjury.

That every person who shall refuse or knowingly neglect to perform any duty enjoined on him by law, or who shall consent to, or connive at, any evasion of the provisions of this act, whereby any property required to be assessed shall be unlawfully exempted from assessment, or the valuation thereof entered at less than its highest current annual rental value as determinable under the provisions of this act, shall, on conviction thereof, be liable for a fine not exceeding two hundred dollars or imprisonment not exceeding one year, or both, in the discretion of the court for each offense.

That said assistant assessors shall not be required to give bond.

(NOTE.—If it is not desired to assess supposed improvements on vacant land, a deduction of a given percentage (say 8) of the value of such supposed improvement might be made from the rental value of the land and improvement in order to determine the rental value of the land.)

The committee adjourned until to-morrow, May 3, 1892, at 11:45 o'clock a. m.

WASHINGTON, D. C., *May 3, 1892.*

The committee met pursuant to adjournment.

Present, the chairman and Mr. Wadsworth; absent, Mr. Washington.

Without transacting any business, the committee adjourned until to-morrow, Wednesday, May 4, 1892, at 11:45 a. m.

WASHINGTON, D. C., *May 4, 1892.*

The committee met pursuant to adjournment.

Present, the chairman and Mr. Wadsworth; absent, Mr. Washington.

Mr. Wadsworth moved that the compensation of the clerk to this committee be fixed at \$6 per day, commencing with the 25th day of April, 1892, and that the stenographer be paid the usual rate, 25 cents per folio, from the 18th day of April, 1892.

The motion was agreed to.

TESTIMONY OF EDWARD J. STELLWAGEN.

EDWARD J. STELLWAGEN, a witness, having been duly sworn by the chairman testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I am a member of the firm of Thomas J. Fisher & Co., real estate brokers.

Q. You are familiar with the value of property on F street, between Thirteenth and Fourteenth streets?—A. Fairly so.

Q. Will you give the committee your estimate of the true value, in lawful money, if sold under ordinary circumstances, of the property in squares 253 and 254, exclusive of improvements?—A. I would like to say that the prices that have been paid for property on that block do not represent the value of that property, because I have personal knowledge of the most of that property on that block, and that it does not pay six per cent interest net. The bulk of it, estimated on the sales that have been made within the last few years, will not pay four per cent. Now, I will instance two cases that I have in mind. My partner and I bought the land immediately adjoining the Sun building on the east, 30 feet front; we paid \$70,000 for it.

Q. How much a square foot is that?—A. Twenty-three dollars and a fraction a square foot.

Q. When was it bought?—A. About two years ago. Now, that property we bought at that time for certain reasons, and the reasons are these, which go along with that purchase, and are the reasons why we gave that price: The office we occupy is on the south side of that street; it is an old building that is not suitable for that street, and we had heard that the owner of it was going to tear it down. It is of great importance for us to keep our place of business as near the old stand as possible, and we cast around to see where we could buy a piece on that block. The only piece we could find was this piece near the Sun building, and we paid that price for it at that time so that if they should tear down the building we now occupy we would have our business near it. But taking the improvements that are on that lot at present, it nets us a fraction over three per cent interest on our money. Taking that lot and destroying the buildings that are on it and putting up the best building we could erect there for office purposes, I could not see my way clear to getting 6 per cent net out of the transaction. That is a case that I have personal knowledge of.

Q. What is the true value of that?—A. It is worth just such a sum as the improvements that could be put upon it will produce interest at the rate of 6 per cent net.

Q. You do not think property is worth what it will sell for?—A. No, sir.

By Mr. WADSWORTH:

Q. How do you reconcile that, for instance, with the Astor estate in New York, where they are perfectly willing to get from 2 to 3½ per cent?—

A. I can not speak for the rate in New York. The rate here is as high as 10 per cent. Where no rate is mentioned, 6 per cent is the legal rate, and I think it is pretty generally conceded here that everybody ought to get 6 per cent, or at least 5 per cent, on his money. I can loan all the money here I want and get 5 and 6 per cent interest on it, on what you call mortgages in the States—we call them deeds of trust—and I think it is only fair to assume that a man who invests in real estate, whether it is on this block or some other block, ought to get 5 per cent.

By the CHAIRMAN.

Q. What do you consider the value of that lot under ordinary circumstances?—A. I could not tell you per square foot, because I have never worked it out, but it would be such a price as that property could be improved at to produce 6 per cent net.

Q. What do you think you could sell it for, the property you speak of—per square foot?—A. I would not be able to answer that question, because I have been trying to sell it for two years and have not been able to do it.

Q. You do not think you could sell it for \$23 a foot?—A. I do not think I could. I made the last sale on that block; that was on the south side of the street. I sold it to Mr. C. C. Willard, who now owns the south side, except one small piece that belongs to Joseph Willard, square 255.

Q. You are his agents?—A. We are his agents. The property that I sold last he paid \$80,000 for, and that piece for which he paid \$80,000 about, I guess, eight or nine months ago, we have just spent \$5,000 or \$6,000 on in remodeling, and have agreed to rent it to Keen, the tailor, for \$3,600 a year.

Q. How much a square foot is it?—A. That was a trifle over \$20.

By Mr. WADSWORTH:

Q. How much is it taxed at?—A. I do not know; I never looked into the matter.

By the CHAIRMAN:

Q. You would say that the true value on either side was less than \$20 a square foot?—A. I would not say that the prices that have been obtained for property on F street represents its true value; it has been beyond its actual value. I think I paid myself beyond its actual value.

Q. Is that as full an answer as you care to make to the question?—A. I want to make you as full a one as I can.

Q. I simply want to ask you now the question, will you give the committee your estimate of the true value, in lawful money, if sold under ordinary circumstances, of the property in squares 253 and 254, exclusive of improvements?

The WITNESS. Do you want me to get down to dollars and cents?

The CHAIRMAN. Yes. Take the lots on the north side and the south side, and give what they are worth, in your judgment?

A. I do not know that I can answer that. I expect I had better say I can not answer that, because I would have to calculate what the buildings that would be put there would produce on the amount invested, and I do not know that I could do that.

The CHAIRMAN. The clerk of the committee will read to you a paper which was submitted to the committee by Mr. Samuel Phillips, one of the witnesses who has testified before us.

(The clerk read the communication from Mr. Phillips which appears in a previous portion of this record.)

The CHAIRMAN. The paper just read you is a part of the testimony of Mr. Samuel Phillips and Mr. B. H. Warner. I understand you to say, in your explanation of the property in the square you referred to, that it must be assessed according to its rental value?

Mr. WADSWORTH. You do not arrive at the value of the property; you arrive at the tax through the rent. In other words, it is a species of income tax.

The CHAIRMAN. Yes, it may be so considered. Tell us what you think of that?

Mr. WADSWORTH. The idea is to tax the rental.

The WITNESS. I have not given this subject sufficient thought to go into it as Mr. Phillips has done. I have not given it any thought whatever. I do not agree with the proposition he makes that the value of the property should be entirely dependent on its rent-producing quality, but its rent-producing qualities in the present and the future. You do not buy a piece of property and calculate solely upon its producing 6 per cent to-day.

Mr. WADSWORTH. Would that not apply to the store property?

The WITNESS. I think it would, but there is something in the future of that which I think would make it worth more.

The CHAIRMAN. You are not prepared to condemn or commend that proposition?

The WITNESS. Not at all.

The CHAIRMAN. What about the character of Mr. Phillips?

The WITNESS. I know him very well; he is a gentleman of good standing in the community.

The CHAIRMAN. A man in whose judgment you have confidence?

The WITNESS. Yes, sir.

The CHAIRMAN. And the same is true as to Mr. Warner?

The WITNESS. Yes, sir. I would say here that the firm of which I am a member, each year pay in taxes for the people we represent over \$70,000, and that, as you will understand, represents a good deal of property. I have known little or no complaint to be made as to the inequality of assessments, of the assessment itself. I do not think I remember a single complaint of any inequality, and only one or two complaints as to the assessment being an improper one, and they were during the time allowed to enter your complaint as to the assessment after it was made. In regard to the new assessment, I do not know anything about it. The men making it are first-class men.

Mr. WADSWORTH. What is the character of the property on which you pay taxes?

The WITNESS. All kinds, in all parts of the city.

Mr. WADSWORTH. In your judgment as a real estate broker, having knowledge of real estate, do you think that the medium property here is taxed at a higher percentage—that is, nearer its full value—than the higher class property?

The WITNESS. I could not answer that, because I have not given any time to an investigation of the subject of taxes. Nearly all the property I control that is occupied by small tenants is owned by rich men. The tenants do not own it; it pays the best rate of interest. I have hundreds of houses that belong to corporations and United States Senators that pay a big rate of interest.

Mr. WADSWORTH. The cheap property always pays the higher rate on the investment?

The WITNESS. It does, always.

Mr. WADSWORTH. That is the case everywhere.

The CHAIRMAN. Who are the Senators who are clients of yours?

The WITNESS. I would rather you would not ask me that.

The CHAIRMAN. I won't insist upon it. But the bulk of this \$70,000 tax is paid on rather valuable property on F street, and other north-western property?

The WITNESS. Well, no, I can not say that it is; on some of the property I control on F street I do not pay the taxes at all. I do not pay Caleb Willard's tax; he pays it himself.

Mr. WADSWORTH. What is the reason why the cheaper property pays the larger interest on the investment?

The WITNESS. I could not tell you, except that there is a greater demand for small dwelling houses.

Mr. WADSWORTH. How much higher are rents here than in Baltimore in the small, cheap houses that men of moderate salaries occupy?

The WITNESS. I know nothing about the rates in Baltimore.

The CHAIRMAN. Do you know of any property on F street for which you have offered a price, that you could not buy, because the owner refused to sell?

The WITNESS. I have none in my mind at present.

The CHAIRMAN. You have not tried to buy yourself, and know of no case such as I mention?

The WITNESS. No, sir; there is one place on F street that can not be bought; it is owned by Joseph Willard and is next to the Ebbitt House. I suppose you could not buy that at any price. I have never made him an offer for it myself.

GEORGE A. ARMES—Recalled.

The CHAIRMAN. Do you know, Mr. Armes, of any large amounts that have been made out of the increase in value of land in the District of Columbia?

The WITNESS. Well, in several cases outside property——

The CHAIRMAN. Anywhere in the District of Columbia?

Mr. WADSWORTH. We do not desire hearsay or newspaper reports, but your own actual knowledge.

The WITNESS. My own actual knowledge from parties with whom I have dealt with?

The CHAIRMAN. Or if for any reason you know the fact from any source?

The WITNESS. Will it be necessary for me to give the names? I can just say yes, that I know of a good many.

The CHAIRMAN. Will you name some of the instances?

The WITNESS. I know a good many parties with whom I have been connected; I do not care about their names being mentioned.

The CHAIRMAN. The fact exists, but you do not care to mention the names?

The WITNESS. Yes, sir; I prefer not to.

The CHAIRMAN. We will not insist, of course.

The WITNESS. Large profits have been made on investments by quite a number of people in the District.

The CHAIRMAN. Land values in the District increase pretty rapidly from year to year, does it not?

The WITNESS. Yes, sir.

The CHAIRMAN. About what percentage?

The WITNESS. Take the whole District, on an average, I suppose it will average 15 per cent.

Mr. WADSWORTH. A year?

The WITNESS. Yes, sir, a year; 15 per cent on an average; year before last it averaged 30 per cent; last year about 20 per cent; this year not quite so much.

Mr. WADSWORTH. Inside property is different?

The WITNESS. The outside property is not taxed so high.

Mr. WADSWORTH. Can you make a brief statement to the committee on what you base that 15 per cent rise every year, an average of 15 per cent on the value of land?

The WITNESS. From the simple fact of extending rapid transit, electric roads, and street lights and improving outlets, and opening new roads out into the suburbs.

Mr. WADSWORTH. Then the principal rise is in the suburbs?

The WITNESS. Yes, sir.

Mr. WADSWORTH. Then there must be a great deal of property in the District that has had no rise?

The WITNESS. Well, in some portions there has been none.

Mr. WADSWORTH. F street is an exceptional case; that is a boom?

The WITNESS. F and G streets.

Mr. WADSWORTH. That was all forced to some extent by the dullness of property owners on Pennsylvania avenue; they refused to meet the demands of the times on the part of people who wanted a better class of shops?

The WITNESS. Yes, sir; at the same time property has not gone down on Pennsylvania avenue.

Mr. WADSWORTH. Rents have?

The WITNESS. Yes, sir; rentals have.

Mr. WADSWORTH. Well, low rentals would naturally decrease the value of your property, would they not?

The WITNESS. I do not think Mr. Noyes would sell his property (the Star building) for any less than he would have three years ago.

The CHAIRMAN. Increase in population always helps land values, does it not?

The WITNESS. Certainly.

The CHAIRMAN. And also anything that helps to build up the city?

The WITNESS. Yes, sir; and general improvement. I look upon it as due more to that class of people who come here desiring to live quietly and enjoy life and peace.

The CHAIRMAN. Did you hear the paper read that Mr. Warner and Mr. Phillips submitted in their testimony?

The WITNESS. No, sir; it was read before I came.

The CHAIRMAN. We ask you to read this paper [handing witness paper] and tell us what you think about it. This paper is part of the testimony of Mr. B. H. Warner and Mr. Samuel Phillips. Do you know those gentlemen?

The WITNESS. Yes, sir.

The CHAIRMAN. What standing do they have in the community?

The WITNESS. They are recognized as business men.

The CHAIRMAN. Wealthy men?

The WITNESS. Yes, sir.

The CHAIRMAN. Conservative men?

The WITNESS. Yes, sir. I would like to say here that I have sold more suburban property than any man in Washington within the last three years. Year before last it more than doubled and trebled on account of the extension of these avenues and streets, and improvements made on the outside through the suburbs, but this year it has not advanced quite so much as it did the year before; it is a sort of off year, but I put it down at an average of 15 per cent.

The CHAIRMAN. Now, what do you say about that paper?

The WITNESS. I think it is all right with the exception that the capacity of the land ought to be taxed; I think that is increasing too.

The CHAIRMAN. You do not think he provides for that?

The WITNESS. No, I do not think he provides for that.

The CHAIRMAN. Yes, if you read it carefully you will see that where the land is vacant they propose to take a piece that is rented in the neighborhood and ascertain what it should be taxed, by the improved property, and assess it at that.

The WITNESS (referring again to the paper). Yes, I see now; I did not notice that clause.

The CHAIRMAN. And a little further on you will see that in the case of vacant land he provides how he would tax it.

The WITNESS. No, it would not be proper to tax it according to improved property.

The CHAIRMAN. He does not say the improved property; the ordinarily improved property. Please make your answer to the question, what do you think of the letter?

The WITNESS. I should say something of this kind ought to be adopted as a change.

C. B. HEMINGWAY—Recalled.

Mr. WADSWORTH. Mr. Hemingway, please take your bill, as proposed, up section by section and explain it. Just read the first section first.

The WITNESS. I propose that in the District appropriation bill the provision for three assistant assessors at \$2,500 each, shall be stricken out and in lieu thereof to insert the following:

For five assistant assessors at \$1,600 per annum each, \$8,000.

Now, I provide more assessors because I think it is necessary to have more in order to get the facts that I think should be obtained in order to make an equitable assessment, and I reduce their compensation from \$2,500 to \$1,600 per annum because I think that is ample pay for the character of service performed. Then I provide that "real estate in said District shall be annually assessed for taxation at its highest current annual rental value, and the Commissioners shall annually fix the rate of tax."

I think it is necessary to make the assessment annually because of the rapid change in values.

Mr. WADSWORTH. I agree with you that the assessment should be made annually.

The WITNESS. Although it might be better to fix a limit beyond which the Commissioners could not go in fixing the rate of taxation, yet I think it might perhaps be well enough for the present, for the first year, to leave the power vested in their own discretion to fix the rate of tax.

That it shall be the duty of said assistant assessors to proceed each year through every part of said District and to require the tenant, agent, or owner of each piece of real estate under rent, to state under oath the full consideration payable as rent; and they shall also determine, by comparison with adjacent or the nearest neighboring lands that are improved and bearing the highest rent obtainable, the highest current annual rental value of all lands not under rent, obtainable; and they shall make return thereof to the District assessor.

In that I have adopted the idea, or the principle, contained in Mr. Phillips's suggestion, and I will say that in one particular my bill is merely calculated to remedy obvious defects in his bill, but besides that I have added one other feature that is not contained in his bill. The section just read provides for the assessment of lands at their highest current annual rental value.

Mr. WADSWORTH. Gross rental value, you mean?

The WITNESS. The highest current annual rental value.

Mr. WADSWORTH. That might lead to confusion. Does that mean net rental value or gross rental value?

The WITNESS. I have explained later on; the next clause explains.

That the highest current annual rental value of real estate shall be considered to be the highest annual rent which could be obtained for its use during the current year in which assessed, if improved with improvements of a value equal to the average value of the improvements on lands of the same class (business or residence) in its immediate neighborhood.

Mr. WADSWORTH. That would lead to confusion right off. You

might have a little house that rented for \$50 a month right alongside of a big building, or surrounded by big buildings that rented for large sums of money. How would you reconcile that?

The WITNESS. I have made a provision——

Mr. WADSWORTH. Why don't you take it at the actual rental; what is the objection?

The WITNESS. For the reason that the actual rental does not represent the investment.

Mr. WADSWORTH. You introduce into that the same element that makes the present system vicious—that is, the matter of judgment.

The WITNESS. Not at all. The element that makes the present system vicious is that no facts are considered; it is altogether a matter of opinion.

Mr. WADSWORTH. They would say “that is not so; we get all the facts we can.” Now the minute you estimate what a fair rent for that building is, then you immediately increase that element of doubt.

The WITNESS. There is hardly a question but that the assessors depend entirely on their judgment, although the law provides that they shall consider all facts obtainable. It specifically provides that, and yet it is a well-established fact in a general way, that they do not consider those facts. Now, I have furnished a basis of fact which will apply to more than one-half of the improved property in the District because all that half or more than half, is under rent, is bearing rent, and that rent is redetermined from month to month as time goes on. If the tendency of rents is to rise, they will be raised as to each piece of property affected. If the tendency is to go down, the rents will go down as to each piece of property affected, and by taking these twenty-three thousand pieces of property as a basis of actual rents, I think that is right. We there have a basis of fact. I will say further that the purpose is to get substantial equality.

(The witness resumed and concluded the reading of his proposed bill, which is to be found in another portion of this record).

Mr. WADSWORTH. When do you provide that assessments shall be finished each year?

The WITNESS. My bill says—

That on the first Monday in March of each year hereafter the District assessors shall report to the Commissioners an assessment list prepared in accordance with the provisions of this act.

Mr. WADSWORTH. You leave that to the assessors?

The WITNESS. Yes, sir; the list is reported in the month of March and the tax is payable on the first Monday of the following May.

Mr. WADSWORTH. Would it not be proper to leave to the District assessor that he shall satisfy himself as to the correctness or as to the falsity of the assessment, and let it rest right there; let him satisfy himself in any way he may think proper.

The WITNESS. I think it is advisable to throw the whole burden on one man and make him responsible, and then you will find it possible to convict him of a violation of law, whereas under the present system it is impossible. I will explain that this bill provides for the adoption of the principle contained in House bill 319 substantially. The penalty clause is simply corrected by the substitution of one or two words.

Mr. WADSWORTH. Who introduced bill 319?

The CHAIRMAN. I introduced it.

The WITNESS. Instead of the exemption of improvements from taxation it provides rather for the reverse of that, that all improvements

that now exist shall be taxed, but also that lands shall be taxed for improvements that are supposed or that might exist.

The committee thereupon adjourned until to-morrow, Thursday, May 5, 1892, at 11:45 a. m.

WASHINGTON, D. C., *May 5, 1892.*

The committee met pursuant to adjournment, but without transacting any business adjourned until to-morrow, Friday, May 6, 1892, at 12:30 p. m.

WASHINGTON, D. C., *May 6, 1892.*

The committee met pursuant to adjournment.

Present, the chairman and Mr. Washington; absent, Mr. Wadsworth.

JOHN F. COOK—Recalled.

The CHAIRMAN. Mr. Cook is this your letter in relation to the rule that you adopted, or that was adopted by the board of assessors (handing witness letter)?

The WITNESS. Yes, sir; that is the letter.

The CHAIRMAN. The letter will be incorporated in the record.

The letter is as follows:

“OFFICE OF THE BOARD OF ASSESSORS,
DISTRICT OF COLUMBIA,
Washington, April 18, 1892.”

HON. SIR: Agreeably to the request of your committee, herewith please find copy of the resolutions adopted by said board July 7, 1891, as its rule of action in making assessments:

“*Resolved*, That in making the assessment of real property in the District of Columbia for the triennial period beginning with the fiscal year eighteen hundred and ninety-three, the terms ‘value’ and ‘true value,’ used in the existing law governing it, shall be regarded as meaning one and the same thing, to wit, true or intrinsic value, and that the measure of such true or intrinsic value is that amount in lawful money which such property would probably bring at forced sale under adverse circumstances.

“*Resolved*, That the above rule of ‘value’ and ‘true value’ shall be adhered to equally in all parts of the said District in making the said assessment.”

Respectfully submitted.

JOHN F. COOK,
Secretary.

Hon. TOM L. JOHNSON, M. C.,

*Chairman Select Committee to Investigate Tax Assessments
in the District of Columbia, House of Representatives, U. S.*

The CHAIRMAN. Do you recollect the receipt of a letter from S. T. Thomas, assistant district attorney at the time or about the time of the organization of the board of assessors, interpreting the meaning of the words “value,” “true value,” and “valuation?”

The WITNESS. The board of assessors was furnished with a newspaper copy of this letter containing these expressions, or these definitions.

The CHAIRMAN. Did the newspaper account agree with what you see in this letter?

The WITNESS. It did, in that particular.

The CHAIRMAN. As I understood you in the direct testimony, you asked the district attorney for the interpretation of the law and of the term "value?"

The WITNESS. No, we did not. We asked him as to what the balance of the letter states, and then Mr. Dawson, while there, asked him this question, and he gave him that interpretation.

The CHAIRMAN. This was in answer to Mr. Dawson's request?

The WITNESS. Yes, sir; to Mr. Dawson's personal request.

The CHAIRMAN. At the time you adopted the rule, a copy of which you have given us, you were familiar with this interpretation of that language by the assistant district attorney?

The WITNESS. This information reached us subsequently.

The CHAIRMAN. How long after you had adopted this rule before you were aware of the fact that it was in opposition to the views expressed by Mr. Thomas?

The WITNESS. Well, about a week.

The CHAIRMAN. Before you had practically commenced the work?

The WITNESS. Yes, sir. We did not consider this so much in opposition to our views.

The CHAIRMAN. I will now read from Mr. Thomas's letter of July 6, 1891, as per copy sent by the District Commissioners to this committee under date of April 25, 1892:

I am asked by one of the assistant assessors to interpret the words "value," "true value," and "valuation," found in the law of 1883. The word "value" may mean one of two things: the utility of an object or its purchasing power. Value differs from price in this, that the price of a thing may be above or below its value. The word "value" as used in the tax act of 1883 means, I think, market value; that is, not what a piece of property would bring at a forced sale, but what persons generally—if those desiring to purchase were found—would be willing to pay for it. "True value" means what a thing is reasonably and fairly worth, and not a fictitious or speculative value. "Valuation" is the act of ascertaining the worth of a thing.

I have the honor to be, etc.,

S. T. THOMAS,
Assistant Attorney, District of Columbia.

His interpretation is in direct opposition to the rule you adopted, is it not?

The WITNESS. It might be said to be so.

The CHAIRMAN. Your rule says that true value shall mean what property would bring at forced sale under adverse circumstances. Mr. Thomas, your legal adviser, says the word value, used in the tax act of 1883, means market value; that is, not what a piece of property would bring at forced sale. So that they are diametrically opposed, are they not?

The WITNESS. I might explain what I understood intrinsic value to mean in contradistinction to what he denominates market value; we did not consider it, and we have not considered it as meaning what a man obliged to sell would take for it.

The CHAIRMAN. That is, you do not take the most adverse circumstances?

The WITNESS. No, sir; not compulsory sale, as a sale on a rainy day when it was pouring down rain.

The CHAIRMAN. But you did adopt a rule, and worked under a rule, that provided that you should ascertain the value property would bring at forced sale under adverse circumstances when the district attorney had notified you within a week after adopting the rule that the tax act under which you were operating, the act of 1883, in which the language occurs "that property shall be assessed at its true value in lawful

money," does not mean the price that property would bring at forced sale.

The WITNESS. We were acting under the rule we adopted.

The CHAIRMAN. You knew you were acting under that rule after the district attorney advised you?

The WITNESS. We did not put so much stress on his ruling. We could have looked in a dictionary for a definition; but we adopted a rule of assessment, and that was the rule we adopted, and when Mr. Thomas' opinion reached us, we did not see any reason to change it.

The CHAIRMAN. Are you familiar with the Supreme Court decision on the same subject?

The WITNESS. That has been brought to my attention.

The CHAIRMAN. Do you think the Supreme Court was wrong?

The WITNESS. No, I do not; but we were authorized to assess.

The CHAIRMAN. At the true value?

The WITNESS. Yes, sir; and intrinsic value we considered true value.

The CHAIRMAN. You consider intrinsic value to mean value under adverse circumstances?

The WITNESS. To mean what property would bring under not very adverse circumstances, but under a sale where a man was obliged to realize to meet an emergency, and we took that as the rule of our appraisal.

The CHAIRMAN. And you followed that rule afterwards?

The WITNESS. We followed that rule pretty generally, and I am afraid we got it too high.

The CHAIRMAN. Do you know that you have assessed some property at more than it was sold for at or near the time the assessment was made?

The WITNESS. Yes, sir, I do.

The CHAIRMAN. We have a return from you on a block where that is the case.

The WITNESS. It is possible that such may have crept in.

The CHAIRMAN. Do you know that you assessed square 253 in your field books, and you and Mr. Moore agreed on the value—

The WITNESS. Those notes were only field notes made casually.

The CHAIRMAN. Those casual field notes were those you read to Mr. Washington and me the evening we called?

The WITNESS. I did not read them; you examined the book and saw them.

The CHAIRMAN. Checked them off?

The WITNESS. Yes, sir; checked them off.

The CHAIRMAN. I want to turn to that square and show you—

The WITNESS. That we have a lot above what it sold for, is that it?

The CHAIRMAN. No, that is not what I was going to ask you. The prices, as you originally have them in your and Mr. Moore's field books, foot up \$907,439 on the square. Your return with the figures as you increased them within the week after that time foots up \$1,496,061, which makes an increase of \$588,622 between the time that Mr. Washington and I examined the books and the time that you furnished us this report from which we are now reading.

The WITNESS. I wish merely to say that these are field notes.

The CHAIRMAN. Please answer my question first. These figures are correct?

The WITNESS. As far as I can judge; yes, sir. I would say as to these low values that they were merely field notes taken six months in

advance of the time that the assessment was made and would have been raised to the figures that they have been raised regardless of the examination of any committee, following the rule of our assessment, that is, commencing with the eastern boundary of the city, the extreme eastern boundary, and extending westward; not a figure has been lowered or raised consequent upon pressure of any kind, but only as the legitimate conclusion of the board of assessors in equalizing and assessing. Our records will evidence that fact from the first to the last.

The CHAIRMAN. Yet you did raise the value of that square as indicated?

The WITNESS. That square was raised in regular order as I explained above.

The CHAIRMAN. But it was raised?

The WITNESS. Yes, sir; and all the others have been raised along this line; sometimes lowered just as much.

The CHAIRMAN. In any case have you lowered it as much as that, \$588,000 on one square?

A. Yes, sir; we have lowered about 60 per cent.

The CHAIRMAN. Then at the time you made these field notes you thought that represented 60 per cent of its market value.

The WITNESS. No, I did not; I said those notes were just made as our individual opinions as to what we thought it ought to be assessed at.

The CHAIRMAN. Under the rule you adopted, which was about 60 per cent of its market value—

The WITNESS. We did not adopt a rule of 60 per cent.

The CHAIRMAN. Under the rule you adopted, it was what it would bring at forced sale under adverse circumstances?

The WITNESS. No, sir; I do not know that I had that altogether in mind when I made the notes.

The CHAIRMAN. What did you have in mind?

The WITNESS. What would be a fair assessment value for properties.

The CHAIRMAN. A fair assessment value at that time was what percentage of its market value?

The WITNESS. We had not examined it as to its market value.

The CHAIRMAN. Those first figures were then a guess?

The WITNESS. Merely; not more than that; that is all the value we put upon them.

The CHAIRMAN. You did not consider the property as raised \$588,000 on that square?

The WITNESS. Not a cent; but we have been able to adjust these notes with amounts the property has been sold for so as to give us a reasonable appraisement for the property upon which the tax is to be levied.

The CHAIRMAN. But you testified that when two of you agreed on an assessment, that being a majority of your board, controlled the action of the board.

The WITNESS. We finally so ruled—we had to. I have squares in my book marked, and can show you the initials and the words O. K. on these field notes, and yet, at the same time, we sometimes change the value to prices below those indicated, and in the same manner we have raised the value of property because we were brought face to face with sale values, and we had to have a reasonable relation.

The CHAIRMAN. What would you think a reasonable approximate now in regard to the market value?

The WITNESS. I would think it would average 75 to 80 per cent of the market value.

The CHAIRMAN. That is what you now interpret true value to mean under this rule?

The WITNESS. I do, and insist on it.

The CHAIRMAN. Yet on the evening that Mr. Washington and I made this examination of your books and compared them with Mr. Moore's, the expression was freely used between us that you two gentlemen seemed to agree pretty well, you raised no question then that those figures were, in your judgment, wrong?

The WITNESS. I did not, and I do not say that they are wrong now.

The CHAIRMAN. Do you think they are wrong now?

The WITNESS. Well, in this light I do, with the light of our equalization and of the market values.

The CHAIRMAN. And that light came to you after the first examination made by Mr. Washington and me?

The WITNESS. Oh, no; that light came all along the line; I have shown you our outspread map of every square and lot in the city, with these values from beginning to end, up to and near the point which we reached the day you examined it; that book stands as it was; not a syllable changed, not a figure changed from the eastern portion and middle of the city right straight up along F street and down the streets. It would have been illogical to have that square east of it at one price and this one at a lower price, and we followed that right along.

The CHAIRMAN. And where you changed you left the old figures in black pencil on your book, and the new figures you made with blue pencil?

The WITNESS. I transferred them myself so as to preserve them for future reference, if any objection would be raised by the people, or would come from any source.

The CHAIRMAN. You have your book arranged in that way?

The WITNESS. Yes, sir.

The CHAIRMAN. Have the others done the same thing?

The WITNESS. No, I do not think they have; I know they have not in a great many cases.

The CHAIRMAN. You raised the values of a great many other squares above those in your original field notes?

The WITNESS. Every one in that way; a portion of West Washington has been reduced in like proportion, and yet it harmonizes from beginning to end.

The CHAIRMAN. Did you change the figures on the square in which the Langham Hotel is situated from the original field notes?

The WITNESS. Oh, yes.

The CHAIRMAN. Do you remember what those changes were?

The WITNESS. I can tell you; I know that corner piece of mine was placed at \$5 per square foot.

The CHAIRMAN. Worth about \$14 per square foot, is it not?

The WITNESS. No, I never thought that.

The CHAIRMAN. Expert testimony has been given that it is worth \$14 a square foot.

The WITNESS. I did not know about that; I would like anybody to give me \$12 per square foot for it.

The CHAIRMAN. It is assessed at \$5 per square foot.

The WITNESS. Yes, sir; and it harmonizes all the way down; my associates were not disposed to have it as much as that, but I told them I wanted it raised and they gratified me.

The CHAIRMAN. You can not buy property at 25 per cent more than those figures in that block, can you?

The WITNESS. I do not think you can—yes, I will undertake to buy the property for you at that rate.

The CHAIRMAN. At 25 per cent more than the assessed value?

The WITNESS. No, I will say 33 per cent.

The CHAIRMAN. I wanted to ask you to identify these sheets [indicating abstracts from the assessment of 1892-'93] by numbers and amounts?

The WITNESS. I put my "attest" to these figures only in respect to the rate per foot and the improvements.

The CHAIRMAN. These sheets which bear this indorsement, "Attest correct, subject to any further revision, John F. Cook, Secretary, Board of Assessors of D. C.," so far as you know are correct?

The WITNESS. The rate per foot and the value of the improvements are correct; they were compared by me; as to the figures in the other columns, I had to accept the clerk's calculations.

The CHAIRMAN. And the calculations were made under your direction by a clerk in your office?

The WITNESS. Well, by a clerk in the assessor's office.

The CHAIRMAN. And you believe them to be correct?

The WITNESS. Yes, sir; and we believe them to be correct; it was our wish to have them correct.

The CHAIRMAN. And you have every reason to believe that they are correct?

The WITNESS. Yes, sir. I want you to have the fullest information possible.

The figures on the sheets referred to are as follows:

Squares.	Ground value.	Improvements.	Squares.	Ground value.	Improvements.
102	\$223, 949	\$103, 250	369	\$253, 918	\$191, 000
126	521, 560	324, 350	374	221, 483	153, 400
224	1, 237, 604	255, 400	376	937, 270	265, 500
225	1, 158, 168	246, 500	377	1, 026, 791	556, 650
239	276, 898	284, 350	509	122, 395	120, 350
253	1, 496, 061	341, 400	674	98, 988	121, 950
254	1, 555, 385	397, 600	675	133, 902	253, 700
280	166, 948	158, 600	721	78, 218	147, 500
289	958, 848	182, 450	846	41, 498	30, 000
290	726, 648	189, 700	903	50, 751	22, 600
320	629, 314	121, 350	924	48, 776	42, 100
321	546, 786	157, 200	934	33, 969	22, 600
346	643, 687	158, 000	1003	43, 843	117, 500
347	479, 088	132, 100			

WASHINGTON, D. C., *May 12, 1892.*

The committee met pursuant to call of the chairman.

Present, the chairman and Mr. Washington; absent, Mr. Wadsworth.

The following letter was submitted by the chairman:

OFFICE OF THE BOARD OF ASSESSORS,
DISTRICT OF COLUMBIA,
Washington, May 11, 1892.

DEAR SIR: In reply to yours of 10th instant, I have the honor to say that the property named "The National Safe Deposit Savings and Trust Company" will probably be assessed at \$20 per square foot for the land, and \$140,000 for the building. Of course these figures may be changed prior to June 1, as no fixed value is put upon any piece of property until that date.

Very respectfully,

JOHN F. COOK,
Secretary of the Board.

Hon. T. L. JOHNSON,
Chairman Committee on Assessments, District of Columbia.

TESTIMONY OF BENJAMIN P. SNYDER.

BENJAMIN P. SNYDER, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. Mr. Snyder, what is your occupation?—A. I am president of the National Safe Deposit and Trust Company of the District of Columbia.

Q. In your published report under date of March 1, 1892, there is an item, "banking house, furniture, and fixtures, \$777,237.12." Will you please tell the committee of what property that consists?—A. The real estate consists of lot 8, square 322, and the improvements are assessed at \$664,000.

Q. Assessed by whom?—A. By the Comptroller of the Currency at the time of the reorganization.

Q. When?—A. During the early part of 1891, February or March, 1891.

Q. It is not worth any less now, of course?—A. For our purposes, no.

Q. Then that accounts for part of it only?—A. That accounts simply for the ground and the improvements.

Q. What else does this item include?—A. The balance includes the vaults, furniture, and fixtures.

Q. Really a part of the building?—A. Well, in one sense, yes; they were out of the building line; the buildings were quite extensive, running on New York avenue 65 feet and 130 feet on Fifteenth street, from the outer line to the building line on Fifteenth street; the width is 20 feet.

Q. It is really a building?—A. Well, yes, a building we would call it. For our purpose it is quite as valuable as though we owned it.

Q. You do not own it?—A. We do not own it. It is an appurtenance.

Q. Is that on lot 8?—A. It is an appurtenance to lot 8.

Q. It is not situated on any other lot?—A. No.

Q. Well, why do you say that you do not own it?—A. We do not own it in fee simple, that is, we could not build on it above the surface; we do not own it in that sense. Practically we own lot 8, this is an appurtenance to lot 8 and we have a perpetual right to what is known as the vaulting privilege, so that to all intents and purposes we do own it; we own the perpetual use of it.

Q. Where did you get that right from?—A. That right came to us originally from the United States.

Q. Is it under the street?—A. Under the sidewalk.

Q. It is as much a part of your improvements as the balance of your buildings?—A. Exactly. It is a perpetual leasehold. I suppose that would be a fair statement.

Q. Do you know what that property has been assessed at?—A. It is assessed at \$7 per square foot.

Q. And what is it worth by the Comptroller's report?—A. Eighty dollars per square foot.

Q. And is assessed at less than 10 per cent?—A. Yes, taking it in that way. It was manifestly unfair, but we never appealed from it, because I found it was of no use.

Q. What was it assessed at?—A. Originally, when the building was first finished in 1888—it was constructed in 1887 and finished in 1888—

and the then assessor, Mr. Fish—Ross Fish—assessed it, my impression is, in excess of \$125,000.

Q. What was it worth?—A. On a personal appeal to him he reduced it to \$100,000, which made it \$35,000 higher than any private building in the city of Washington, and I would add that it is the best constructed private building in Washington.

Q. What are the building and the vaults, and everything that goes with them, worth?—A. Mr. Windrim says they could not be replaced for \$330,000 now. He was the architect. But, of course, that is a value appertaining to our peculiar business; for other purposes, of course, it would not be worth that much.

Q. What do you think that entire property, which you returned as being worth \$777,000, should be assessed at?—A. That is a difficult question to answer. I can say—

The CHAIRMAN. We want your judgment as a business man.

The WITNESS. Do you mean for the purpose of taxation?

The CHAIRMAN. Yes.

The WITNESS. Well, on the present market I should say it would not be over \$20 or \$25 a foot, really, and the building at not over \$125,000 or \$150,000.

Q. How many square feet are there?—A. Four thousand five hundred and sixty-nine square feet.

Q. That makes \$250,000; you think that this property ought to be assessed at that amount?—A. No; I do not say that it should be—

The CHAIRMAN. Please make your own statement. According to your two previous answers it makes that amount.

The WITNESS. I will say this. That if other property was assessed in proportion, then I would have no objection to that assessment. If the necessities of the revenue required that advance in the assessment, then I should have no objection to that, provided that other property was assessed in proportion. But you take our property on the corner; the ground is assessed at \$7 a foot, and the adjoining lot at about \$2.50, my impression is, and so on through the square.

The CHAIRMAN. That is manifestly unfair?

The WITNESS. Yes, sir. Take our building; it is assessed at \$100,000 now; we got the twenty-five thousand taken off on the last assessment. The Shoreham is assessed at \$75,000, and the Sun Building at \$80,000.

Q. Your estimate of value and assessed value seems to be that 30 per cent of the true value ought to be the assessed value, and I understand that you mean by that that if all property was assessed at 30 per cent of its true value that it would be perfectly fair?—A. Certainly.

Q. And it is manifestly unfair that some property should be assessed at 80 or 90 per cent, and your property be assessed at 30 per cent?—A. Exactly; that is it sir. It should be uniform, about two-thirds of the real value under adverse circumstances, or one-third of the real value of the property.

Q. What effect do you think the tax upon buildings has upon the improvements in the District?

The WITNESS. In what respect?

The CHAIRMAN. Whether it is a good thing to tax buildings or not?

A. No, I should be in favor of taxing the land simply.

Q. Land values, you mean?—A. Yes, sir; tax the land at its value.

The committee thereupon adjourned to meet on call.

WASHINGTON, D. C., *May 13, 1892.*

The committee met pursuant to call of the chairman.

Present: The Chairman and Mr. Washington; absent, Mr. Wadsworth.

TESTIMONY OF GEORGE C. HENNING.

GEORGE C. HENNING, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation, Mr. Henning?—A. I am in the banking business.

Q. Please state your official connection with the bank.—A. I am president of the Traders' National Bank, of Washington, D. C.

Q. You have given some thought to the subject of whether it is better to levy taxes for District purposes on land and improvements, or on land exclusive of improvements, have you not?—A. I have; yes, sir.

Q. Will you please give the committee the result of your consideration on the subject?—A. The result is in favor of taxing land values only; I am in favor of taxing land values in cities, irrespective of improvements, and have been for a number of years, but not with respect to agricultural lands, in regard to which I have a different opinion.

Q. What effect do you think the taking of the tax off of buildings and raising the entire revenue from the land, would have in this city generally?—A. I think it is generally beneficial to every city, because it is an incentive to improvements.

Q. It would build up and beautify the city, would it?—A. It would have a tendency to make men put up buildings rather than buying land and holding it for speculative purposes, which they are largely doing at present.

TESTIMONY OF J. H. RALSTON.

J. H. RALSTON, having been duly subpoenaed, was sworn by the chairman and testified as follows:

By the CHAIRMAN:

Q. Will you please tell the committee your occupation?—A. I am a practicing lawyer.

Q. To what branch of the practice do you devote most of your attention?—A. My practice is of a very general nature, but perhaps for the most part in connection with real estate matters.

Q. Have you given any thought to the question of the advisability of putting tax on land exclusive of improvements and its effect? If so, please give the committee your views on that subject.—A. I have thought a good deal about it for the past ten years. It seems to me that a very slight consideration of the subject would make it manifest that the exemption of improvements from taxation would be beneficial to the community as a whole, and to each individual member of the community. The natural tendency of such exemption would be to stimulate improvements in number and in character that would tend to encourage the formation of independent homes for the citizens.

TESTIMONY OF DR. ROBERT REYBURN.

Dr. ROBERT REYBURN, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I am a physician.

Q. Have you given any thought to the subject of putting the burden of taxation on land exclusive of improvements?—A. Yes, sir; I have.

Q. Will you give the committee the result of your investigation of that subject, and what you think its effect would be?—A. I am decidedly in favor of it, for the reason that at present it is a tax on enterprise. As an illustration, take my own square, square 80, or at least the square between Twenty-first and Twenty-second street on F street. I own considerable property there, some nine houses, and I am the only one who has improved that property for a great many years; only during the last year has there been any improvement. Through my expenditure of money and that of a good many others in the surrounding squares that property has enhanced in value, and the property of others has enhanced without their expending any money at all. I am certainly improving their property at my expense, and enhancing the value of their property without their investing a single dollar.

Q. And their taxes are not as much as yours?—A. No, the taxes are not; of course the value has been very largely raised.

Q. But to the extent of tax on improvements you pay more than they do?—A. Oh, of course; very much more; twice as much, at least.

Q. Improvements do not appreciate in value?—A. They depreciate.

Q. Improvements on land do not appreciate in value?—A. No; of course the house deteriorates after awhile.

Q. Taking the whole District, the improvements depreciate in value from year to year?—A. Yes, sir.

Q. And the land?—A. It increases.

Q. So that the effect of this would be to put the burden of taxation on that part of the property that appreciates and relieve it from that part of the property that depreciates?—A. Exactly; yes, sir.

TESTIMONY OF PAUL T. BOWEN.

PAUL T. BOWEN, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I am at present a clerk in the Treasury Department.

Q. Please give your other official position.—A. Professionally, I am a farmer.

Q. Are you not at the head of some labor organization?—A. I am connected with the Knights of Labor.

Q. Have you given any thought to the subject of putting the burden of taxation on land, exclusive of improvements; and if so, will you tell the committee what you think of that proposition?

The WITNESS. Do you want my personal opinion, or as a representative?

The CHAIRMAN. Your personal opinion; you can not testify except personally.

The WITNESS. I would say, with regard to that, that I have been selected by District Assembly No. 66 of the Knights of Labor to represent them and to speak for them, and I have given the matter attention, and my opinion is, it would be beneficial to the workingmen, the wage-workers of the District, if the taxes were assessed entirely upon land values.

Q. Why?—A. Because it would have a tendency to increase their wages, to diminish the house rents, and to reduce the taxes they pay.

Q. Who would pay the increase?—A. Well, the employers of labor would pay the increased wages, and the reduction of house rent and reduction of taxes would fall ultimately on the landowners.

Q. Do you think this would fall on the small landowner or the men who own valuable land?—A. Well, proportionately on all of them; but as taxes are assessed here in the District it would fall most heavily on those who own valuable land or large tracts of land. I would like to state, as illustrating, that these workingmen are heavy taxpayers; that they pay the taxes on the building that they live in, and most of them live in rented buildings. If you will notice the advertisements of houses for rent in *The Star* you will notice that they read \$20.30 or \$25.80; instead of being an even amount, there are almost always some cents put in. That results from the custom which prevails here of the landlord paying the water tax or water rent, instead of leaving it to the tenant to pay. Formerly the custom was that the tenant paid it; but the landlords, desiring to have it paid certainly, have simply added it to the rent and paid it themselves. A house that rented for \$20 if the tenant paid the water tax would be \$20.30 if the landlord pays it, thereby proving that it is the tenant who pays the tax ultimately, no matter who pays it over to the collector. And not only that, but if the tax, added to the rent, for water, is 30 cents, the probability is that the landlord does not pay over 20 cents. He gets his tax back and something in addition to it, and we believe that the same principle prevails exactly with regard to the tax on the building.

Mr. WASHINGTON. Don't you think that the same rule also prevails in regard to the tax of the land on which the building is situated, or in regard to the lot on which the building is situated, that the tenant pays that tax, that it is computed in his rents.

The WITNESS. Yes, I do; but I do not think it could be increased by increasing the tax on the land.

Mr. WASHINGTON. You do not think that an increase on the land, taking off the tax on the house and putting it on the lot, would be the same thing as if the tax were increased in bulk?

The WITNESS. It would not increase the rent.

Mr. WASHINGTON. Why?

The WITNESS. Because the landlord charges all the tenant will pay now. He has a monopoly of the land, and he charges all the land will produce.

Mr. WASHINGTON. Plus the house on it?

The WITNESS. I am speaking of the ground rent.

Mr. WASHINGTON. Then if the tax on the lot is increased, don't you think that the landlord would ask more rent for his house? Otherwise he would be losing part of his profits.

The WITNESS. He would undoubtedly, but he could not help himself.

Q. (By Mr. WASHINGTON.) Why not?—A. Because it is the supply of land which now determines the rent he can get from his land and increasing the tax on the land leaves the supply of land precisely the same; the result would be that he would be compelled to pay the tax

out of his rent, which is simply the monopoly price of his land; he charges all the land will bear.

Q. Suppose you put the tax all on his land and the taxes amounted to more than the rent, what would become of the land owner then?—A. He would be frozen out.

Q. Do you think that would be desirable?—A. Yes.

Q. Who is to take his place if you freeze out the present owner?—A. We want land, we do not want landlords.

Q. Who takes his place, somebody has to succeed him; what is to become of the land; who will pay the tax if you have no owner?—A. The tenant, the man who uses it.

Q. In other words you think the state should be the owner of the land?—A. I am perfectly willing to have it that way.

Q. You want state ownership instead of individual ownership of land?—A. Certainly.

Mr. WASHINGTON. I do not agree with you that that would be at all desirable.

Q. (By the CHAIRMAN.) You say that a tax falling on land would be paid by the owner and not increase the rent; what about a tax on buildings?

The WITNESS. If it should be increased?

The CHAIRMAN. Then why is it that a tax falls on the tenant on buildings and does not fall on him on the land?—A. Because the tax on the building checks the number of buildings, limits the supply, and the landlord can get the rent back, or get the tax back.

Q. And the increase of tax on buildings, I understand you——A. (Interrupting.) Still further limits the amount of building done.

Q. And the taking of the tax off of buildings will stimulate building so that the rent will go down?—A. Yes, sir.

Q. (By Mr. WASHINGTON.) Mr. Bowen, if you were to tax the real estate so as to, to use your expression, "freeze out" the present owners, who would then erect the buildings?—A. People who wanted to use them.

Q. Do you think a man would put up a house on a lot where he could have no semblance of title?—A. Yes, if he could have security of ownership of his house.

Q. What security of ownership would you give him under such circumstances as you mention?—A. The same that he has now.

Q. But you think the State ought to have the right to put a tax on that land and confiscate it. When you confiscate the land, why don't you confiscate the building on that land?—A. It is just as feasible as it is where buildings are now erected on land that are now under ground rents, as a great many are.

Q. But that title is in some party?—A. It is not in the man who puts the building on it.

Q. Only for a certain length of time.—A. That is a matter between the parties which is just as feasible between the Government and the tenant as between the landlord and the tenant.

Q. I want to bring out that point. I think you would have to come to the Government ownership of land.—A. Yes; I claim that ground rents should be appropriated to public uses, and, of course, if the entire ground rent were so appropriated it would result in abolishing the private ownership of land.

Q. And you would rather have Government monopoly in land than private monopoly?—A. Certainly. I would not call it a monopoly in that case.

Q. It would be a monopoly.—A. When everybody are equal owners of land there is no monopoly.

Q. You could have a monopoly even under your theory, because one man might possess a larger or more valuable square than another.—A. That is to say, if all ground rent was paid over to the community it could be divided equally, if you saw fit, or you can use it in lieu of any other tax.

Q. (By the CHAIRMAN) What do you call that belief, land nationalization?—A. Well, that is a good enough name for it.

Q. (By Mr. WASHINGTON.) Your equality of ownership, it strikes me, would be destroyed in this way. Suppose one man used his lot to put up a house worth two or three thousand dollars to occupy himself, and another man used another piece of ground belonging to the State worth half a million of dollars, you would not have equality then in ownership, because one would be getting a large profit and the other would not?—A. I am speaking of the people——

Q. You are not speaking of the people occupying it.—A. All of us would derive the same revenue from the same tract of land if they were equally valuable, and as far as the other parties losing is concerned, that is their lookout if they do not make the best use of it.

Q. After these improvements are put up do you still think there would be equality of value; would not the house worth half a million be more profitable than the one worth two or three thousand dollars?—A. The lots would be of equal value.

Q. Don't you think the lots would vary under your theory in prices as much as they do now, according to location and advantages?—A. Possibly; but I thought you were assuming that the two lots were inherently equal.

Q. No, I was getting at a broader proposition. Then, according to your theory, the Government would be the landlord and the real owner of all the real estate, and the tenant would pay rent, and that would be in lieu of all taxes?—A. Yes, sir; they are compelled to pay it anyway, and instead of paying to a private owner they would pay it to the Government, all other taxes to be abolished entirely.

Q. Instead of taxes you would just have rents?—A. Yes.

Q. That is a "no-tax" scheme?—A. The community would get its revenue out of its own property. It is called "single tax," which is a very great misnomer.

Q. It ought to be no tax, not a single tax?—A. Yes, sir.

TESTIMONY OF JOHN JOY EDSON.

JOHN JOY EDSON, having been duly sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I am secretary of the Equitable Coöperative Building Association.

Q. Have you given the subject of taking the tax off of the improvements and putting the tax on land values, exclusive of improvements, any thought?—A. Yes, sir.

Q. Will you give the committee the benefit of your judgment on that question?—A. I will; I have not given the matter a thorough, or as thorough consideration as I probably should have done, but what

thought I have given it has been favorable toward levying taxes exclusively on the ground value.

Q. And by ground values you mean land values?—A. Yes, sir.

Q. Exclusive of improvements?—A. Yes, sir.

Q. What effect do you think it would have in building up and beautifying the city?—A. I think it would have a very good effect. I think it would encourage and cause a great deal of additional building.

Q. It would improve the character of the homes?—A. It would have a good effect upon the character of the homes, too. Men would build better homes; I mean men of moderate means.

Q. It would help the medium and poorer classes of men more than anyone else?—A. Yes, it would help all classes, I think, but especially the people of moderate means. Take a man who has a lot worth \$500 or \$1,000 who wants to build a house worth \$1,500, a man who has been careful, industrious and thrifty, and who has taken care of every dollar; when he comes to build his house he says: "I can put a house here for \$1,500, but if I put verandas, etc., on it and different improvements amounting to \$300 more, I will be taxed just that much more," and he will think about that saving of \$4 or \$5 or \$10 a year, and he will not make those additions.

Q. Improvements in the District of Columbia depreciate every year, do they not?—A. Improvements depreciate, of course.

Q. And yet the increase in the number and character of improvements is one of the very causes of increase in land values?—A. Certainly; there is no doubt about that.

Q. And land values increase every year, do they not?—A. Yes, of course; you go out anywhere where there are very few homes and you put up several houses and see how quick the effect will be on the surrounding ground.

Q. Then your idea of putting the tax on land values is that you are putting a tax on that value of the property that is appreciating all the time and taking it off of that property that depreciates?—A. Oh, yes; as I say, as far as I have given this subject thought, which, I must admit, has not been very thorough, it has been favorable to this way of taxing. As I understand the matter, good improvements tend to increase the value of property, whereas the improvements themselves are depreciating.

Q. And that you are taking it off of the depreciating part and adding a little to that part that gets most of the benefit?—A. Yes, sir.

Q. What percentage of increase do you think land values gain annually on an average throughout the entire District?—A. I do not know. Do you mean the average throughout the city?

The CHAIRMAN. Yes.

The WITNESS. Since 1879 it has been pretty rapid; I should think it has been at the rate of 12½ per cent a year. Of course that is rather a quick estimate. I have not given the subject much thought.

TESTIMONY OF E. W. OYSTER.

E. W. OYSTER, having been sworn by the chairman, testified as follows:

By the CHAIRMAN:

Q. What is your occupation?—A. I am a printer by trade, and at present employed on the *Evening Star* as compositor.

Q. What is your connection with any labor organization?—A. I am simply a member of the Typographical Union, and have been for twenty-five years; a member of the Knights of Labor, Local Assembly 2672, of this city, and delegate to the Federation of Labor Unions, and chairman of the legislative committee of the Federation of Labor.

Q. Have you given any thought to the subject of exempting improvements from taxation and putting the entire tax on land values; and if so, will you tell the committee what your judgment is on the subject?—A. I have given a great deal of thought to this question, as other workingmen have done, and the conclusion that I have come to in regard to it is that it would be very beneficial to the class of people to which I belong, the wage-working class; that it would increase their opportunities to secure land, and thereby facilitate their opportunities and their capacities for securing homes of their own. Of course, if a man has \$3,000 to invest in a home, and he wants to build a certain kind of house, and it will cost him so much money to do it, and he wants to get in a certain locality which will enable him to reach his business promptly, if he finds that the land is going to cost him four times as much as he thought, or would be willing to give, it will either prevent him from building or put him to the inconvenience of going to a place where he could get land cheaper, and the probability is that when the opportunity he desired is destroyed it would prevent him from building at all, and he would not secure his home.

Q. Your idea is to relieve improvements from taxation and put the tax on land value?—A. That is my idea.

Q. Would it beautify the city and build it up?—A. I think it would have a great tendency that way, from the thought I have given it.

Q. How do people of your unions generally feel toward this subject?—A. Well, this matter has been discussed a great deal in the last four or five years among workingmen in their organizations and outside, and I think I can safely say that the organized working people generally are practically unanimous in favor of this change of taxation.

Q. What do you know about the increase of land values in the District?—A. Well, my knowledge of it is simply a general knowledge of the increase in particular localities. I lived several years ago on Ninth street between S and T streets, and immediately opposite was a whole square of ground—vacant ground—owned by a Mr. Willard; I do not know which one, but he held it for years unimproved. He used to hire it to circuses whenever they came to the city; he rented it out on such occasions, and I suppose he received some little revenue from it in that way; but, of course, it was being held for speculative purposes. I understand he bought it at 20 cents per square foot originally. That is only hearsay, of course. After that section of the city was built up the land increased very rapidly from year to year. I think that particular square increased above Mr. Edson's estimate; but that was, I believe, for the whole District generally. Of course, in certain localities there have been much higher jumps than Mr. Edson's average. I do not know whether the ground was sold, but I understand that the ground that is left there is held at \$3 per square foot. That was an increase from 20 cents to \$3 per square foot.

Q. In how long a time?—A. I think in something like fifteen years.

Q. How much do you think the average increase of ground in the city would be a year?—A. That is a subject I have never given any consideration. I would not be able to give you anything like a correct estimate on that point.

SATURDAY, *May 14, 1892.*

The committee met pursuant to call of the chairman.

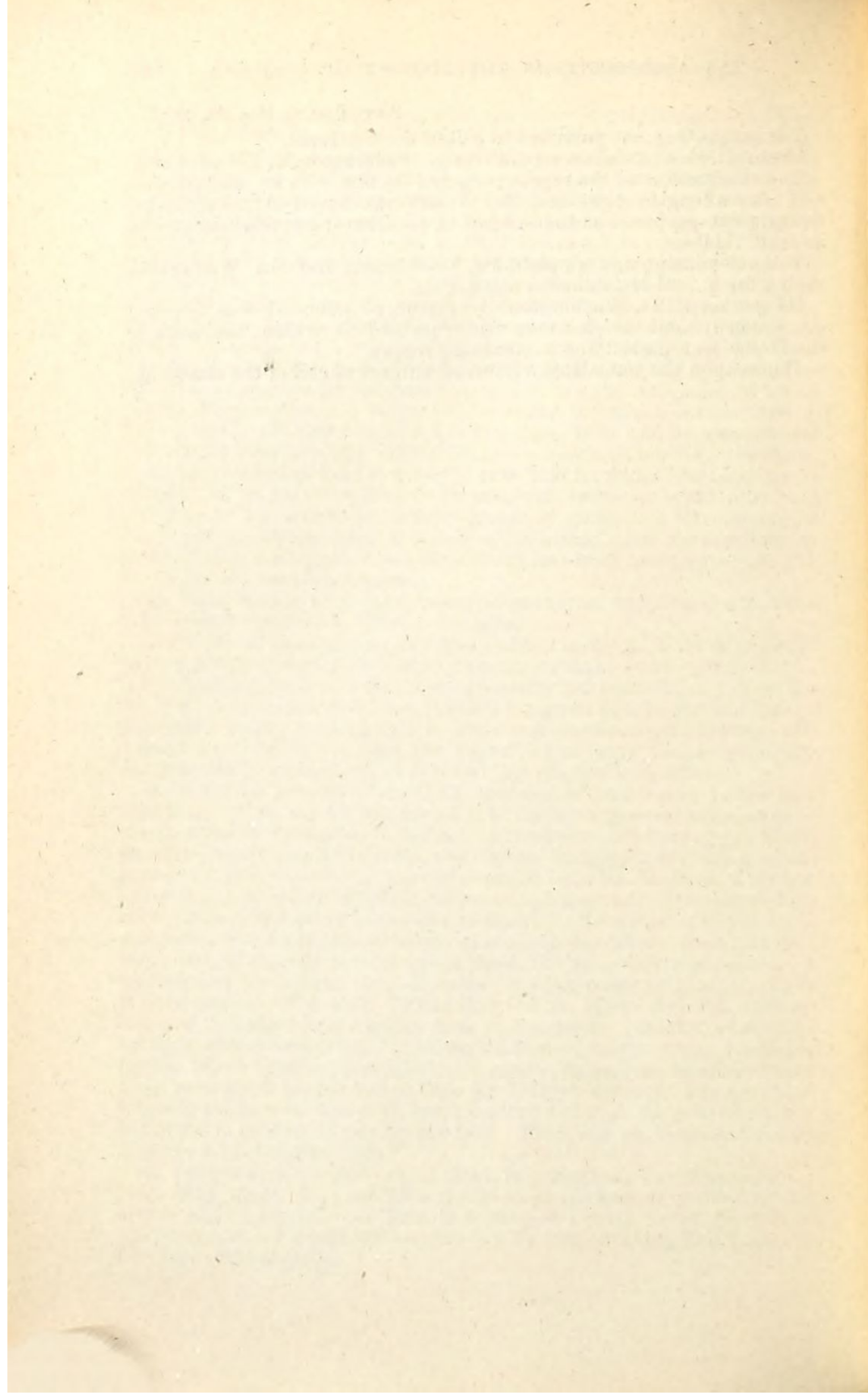
Present: Messrs. Johnson (chairman), Washington, and Wadsworth

The chairman read the report proposed by him with an amendment, and after a lengthy discussion Mr. Wadsworth moved to include in the amendment proposed as the subject of taxation improvements as well as land values.

The amendment was adopted, Mr. Washington and Mr. Wadsworth voting for it, and Mr. Johnson against it.

On motion of Mr. Washington the report, as amended, was adopted unanimously, and the chairman was requested to present the same to the House as a partial and preliminary report.

Whereupon the committee adjourned subject to call of the chairman.



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DETAIL OF CERTAIN OFFICERS FOR SPECIAL DUTY IN
CONNECTION WITH THE WORLD'S COLUMBIAN EXPO-
SITION.

MAY 24, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. OUTHWAITE, from the Committee on Military Affairs, submitted
the following

REPORT:

[To accompany S. 866.]

The Committee on Military Affairs, to whom was referred a bill (S. 866) to authorize the Secretary of War to detail certain officers of the Army for special duty in connection with the World's Columbian Exposition, having had the same under consideration, report that a House bill (H. R. 618) of a similar nature as the Senate bill was reported favorably to the House at this session, with an amendment, as follows:

Provided, That nothing in this act shall be considered as authorizing the detail of any officer of the Army for any work as a civil engineer.

Your committee therefore recommend the passage of the Senate bill, amended by adding the above proviso.

WILLIAM LAVERY.

MAY 24, 1892.—Laid on the table and ordered to be printed.

Mr. BELTZHOVER, from the Committee on War Claims, submitted the following

ADVERSE REPORT:

[To accompany H. R. 1650.]

The Committee on War Claims, to whom was referred the bill (H. R. 1650) for the relief of William Lavery, report as follows:

The committee have given the case a careful consideration, and find the following to be its history:

Claimant filed his petition with the commissioners of claims, alleging that he had a claim against the United States for property taken for the use of the U. S. Army, as follows:

No. 2004. Claim of William Lavery, of Norfolk, Norfolk County, State of Virginia:	
250 bushels of wheat at \$1 per bushel.....	\$250. 00
8 tons of hay.....	160. 00
6 head of cattle.....	256. 75
4 head of cattle.....	182. 00
	848. 75

The commissioners of claims disallowed the claim; loyalty and ownership of property not proved.

The Committee on War Claims of the Forty-eighth Congress transmitted the claim to the Court of Claims for a finding of facts. The claim was returned to the Committee on War Claims of the Forty-ninth Congress by the Court of Claims, with the recommendation that claimant be allowed the sum of \$438.75, and this amount was paid to the claimant. (See United States Statutes at Large, vol. 25, p. 1163.)

This claim has grown between 1871 and 1892, to the sum of \$2,716.25 from \$848.75, as first presented.

This claim was investigated thoroughly by the Court of Claims and the claimant allowed a full and fair hearing. The court recommended that he be paid \$438.75, and rejected the remainder, \$410.

The committee hold that the payment of the award made by the Court of Claims was a bar to any further claim upon the Government. Unless the claimant is barred, under the circumstances stated, it would be difficult for the Government to determine when there would be an end to claims put forth against it.

The committee report adversely to the bill and recommend that it do lie upon the table.

MRS. M. E. ARNOLD.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FLICK, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 1177.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1177) granting a pension to Mrs. M. E. Arnold, submit the following report:

Mrs. M. E. Arnold was an army nurse in the late war of the rebellion engaged at Jackson Hospital, Tennessee, from October 16, 1862, to February 13, 1863, and at hospital, Memphis, Tenn., from March 28 to to April 4, 1863, and at Benton Barracks Hospital, St. Louis, Mo., May 26, 1863, to September 4, 1863. Her maiden name was M. E. Elliott. The records show she was a valuable nurse. She is now poor and dependent on her own daily toil for support.

Your committee recommends the passage of this bill after amending the same by adding after the word "nurse," in sixth line, the words "and pay her a pension of twelve dollars per month."

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JOHN C. DULL.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Maryland, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 4796.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 4796) to correct the naval history of John C. Dull, having considered the same, beg leave to report:

It appears from the evidence that Dull enlisted in the Navy January 13, 1847, at the age of 18 years, as a landsman, for three years; that he served on board the U. S. ships *Onatrio*, *Franklin*, and *Ætna*, and that while serving on the last-named vessel, on the 3d day of June, 1848, he failed to report for duty before the sailing of his ship, and thereby became chargeable with desertion, for which he was deprived of all pay and allowances then due him and "dishonored for all his services during the war."

In his letter to the Secretary of the Navy, dated December 9, 1891, Dull states, in explanation of his conduct, that he was led astray, during temporary excitement, by persons older than himself, and that he was wholly unconscious of committing any serious injury to the Government. He further states in this letter that he "would never have made a complaint, perhaps, of the harshness of this punishment had he not met with a severe accident in 1866, by which he lost all the fingers of both hands, rendering him incapable of manual labor in his advancing years."

Under these circumstances and (as stated by the Secretary of the Navy in his letter of March 11, 1892, herewith appended) "in view of the fact that Dull was a minor at the time of his enlistment and of his desertion, and that prior to the date of his desertion hostilities had ceased and the treaty of peace between Mexico and the United States had been concluded and ratified," the committee report favorably on the bill and recommend that it do pass.

NAVY DEPARTMENT,
Washington, March 11, 1892.

SIR: I have the honor to acknowledge the receipt of the letter from the Committee on Naval Affairs of the House of Representatives inclosing H. R. bill No. 4796, "to correct the naval history of John C. Dull," and requesting the opinion of this Department as to the merits of the proposed legislation.

It appears from an examination of the records of the Bureau of Navigation, Navy Department, and in the office of the Fourth Auditor of the Treasury, that Dull enlisted in the Navy January 13, 1847, at the age of 18 years, as a landsman, for three

years; that he served on board the U. S. S. *Ontario*, *Franklin*, and *Etna*, and that he deserted from the latter-named vessel off Frontera, Mexico, June 3, 1848.

In view of the fact that Dull was a minor at the time of his enlistment and of his desertion, and that prior to the date of his desertion hostilities had ceased, and the treaty of peace between Mexico and the United States had been concluded and ratified, the Department perceives no objection to the favorable action by Congress upon the bill to correct his naval history.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Hon. HILARY A. HERBERT,
Chairman Committee on Naval Affairs, House of Representatives.

WASHINGTON, D. C., *December 9, 1891.*

SIR: Your humble petitioner, John C. Dull, age 62 years, residing in Washington City, respectfully submits the following statement of facts:

In the year 1847, being then a minor, and working at my trade of blacksmith, I enlisted in the U. S. S. *Etna* as a landsman for during the war with Mexico. I served in said capacity until the 3d day of June, 1848, after the treaty of peace between the United States and the Republic of Mexico had been duly ratified, and being led astray, during temporary excitement, by persons older than myself, and wholly unconscious of committing any serious injury to the Government in whose service I had volunteered, I failed to report for duty before the ship sailed from Tobasco. For this infraction of the rules of discipline, which I have ever since regretted, the serious charge of desertion was entered against me, by which I was deprived of my pay and allowances then due and dishonored for all my service during the war.

I would never have made a complaint, perhaps, of the harshness of this punishment had I not met with a severe accident in 1886, by which I lost all the fingers of both hands, rendering me incapable of manual labor in my advancing years, and I have submitted an application to the honorable Commissioner of Pensions to grant me the allowance awarded to the soldiers and sailors who served in the war with Mexico. The Commissioner, on December 1, 1891, rejected my application on the ground that I "was not honorably discharged, but deserted the service June 3, 1848, and the mark of desertion has not been removed."

I therefore humbly petition the honorable Secretary of the Navy, in view of the circumstances related, to grant me an honorable discharge to date from June 3, 1848.

And your petitioner will ever pray, etc.

Very respectfully,

JOHN C. DULL.

The SECRETARY OF THE NAVY.

WILLIAM J. LANDRAM.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1614.]

The Committee on Claims, to whom was referred the bill (H. R. 1614) for the relief of William J. Landram, would respectfully report:

That said Landram was, during the years 1874, 1875, 1876, 1877, 1878, and 1879, the collector of internal revenue for the eighth district of Kentucky.

That the act of 1863 (which specially provided for the securing of taxes upon distilled spirits) enacted that stamps should be attached to packages of spirits, and allowed a commission of one-half of 1 per cent. on the amount of spirits distilled after the passage of said act in addition to any other commissions by law allowed, which should be equally divided between the collectors receiving the tax and the assessor of the district in which the distilled spirits were produced. (15 Stat., sec. 28, p. 138.)

That the act of 1872-'73, chapter 13, abolished the office of assessor and gave the above additional commission of one half of 1 per cent. upon distilled spirits to the collector alone, his total net compensation however, not to be thereby increased. (17 Stat., sec. 5, p. 403.)

The act of May 8, 1872 (17 Stat., page 86), declares that thereafter the total net compensation of collectors of internal revenue shall in no case exceed \$4,500 per annum.

Section 3314, Revised Statutes, continues the acts of 1868 and 1872 above, and therefore provides for the issue to collectors of books of tax-paid stamps, to be attached to casks of distilled spirits, and allows them a commission of one-half of 1 per cent. on the amount of such tax, in addition to any other commissions by law allowed: *Provided*, That the total net compensation of collectors as fixed by this title shall not be thereby increased.

Thus it appears that Congress has seen fit to give this commission continuously since 1868, and the law in regard thereto has been fully and definitely settled in the case of the United States, appellant, *vs.* William J. Landram (U. S. Supreme Court Reports, Book 30, pages 58, 59, and 60), and which is referred to and made part hereof. (See Appendix A.) It appears from the certificates of the accounting officers of the Treasury filed herewith that said Landram as collector aforesaid, received the salaries and collected and accounted for the taxes on distilled spirits by the sales of tax-paid spirit stamps, all of which, together with the books of stubs of said stamps, were returned and accounted for at the time and in the manner required by law, as follows:

That said Landram as collector of internal revenue for the eighth collection district of Kentucky, was paid for the fiscal year ending June 30, 1874, the sum of \$2,500 (see Appendix B); that he was entitled to receive in addition one-half of 1 per cent. commission on \$150,772.30, taxes collected by him by the issue of tax-paid spirit stamps during said year which amounts to the sum of \$753.86, making his total net compensation \$3,253.86.

That he was paid for the fiscal year ending June 30, 1875, the sum of \$3,000, and that he was entitled to receive in addition one-half of 1 per cent. on \$241,827.70, taxes collected by the issue of tax-paid spirits stamps during said year, which amounts to the sum of \$1,209.13, making his total net compensation \$4,209.13.

That he was paid for the fiscal year ending June 30, 1876, the sum of \$3,000, and that he was entitled to receive in addition one-half of 1 per cent. on \$208,656.30, taxes collected by him by the issue of tax-paid spirit stamps during said year, which amounts to the sum of \$1,043.28, making his total net compensation for said fiscal year \$4,043.28.

That he was paid for the fiscal year ending June 30, 1877, the sum of \$2,890.29, and that he was entitled to receive in addition one-half of 1 per cent. on \$177,639.30, taxes collected by him by the issue of tax-paid spirit stamps during said year which amounts to the sum of \$888.19, making his total net compensation for said fiscal year \$3,266.59.

That he was paid for the fiscal year ending June 30, 1878, the sum of \$2,750, and that he was entitled to receive in addition one-half of 1 per cent. on \$143,319.60 taxes collected by him by the sale of tax-paid spirit stamps during said fiscal year which amounts to the sum of \$716.59, making his total net compensation for said fiscal year \$3,485.21.

That he was paid for the fiscal year ending June 30, 1879, the sum of \$2,750, and that he was entitled to receive in addition one-half of 1 per cent. commissions on \$147,042 taxes collected by him by the sale of tax-paid spirits stamps during said fiscal year amounting to the sum of \$735.21, making his total net compensation for said fiscal year \$3,485.21, the total of said commissions to which he is entitled for the years 1874 to 1879 inclusive, amounting to the sum of \$5,346.20.

None of the foregoing commissions on sales of tax-paid spirit stamps for the years mentioned herein have ever been paid to said collector as stated by him to your committee in session. The y, therefore, recommend the passage of said bill.

APPENDIX A.

[United States, appellant, *vs.* William J. Landram (see S. C. Reporter's ed. 81-86), collectors of internal revenue commissions, act of 1879.]

The right which collectors of internal revenue had prior to the act of March 1, 1879, to the one-half of 1 per cent. commissions on taxes collected on distilled spirits was not taken away by that act.

(No. 1299.)

Submitted April 5, 1886; decided April 19, 1886.

Appeal from the Court of Claims. Affirmed.

The case is stated by the court.

Messrs. John Goode, solicitor-general, and Ed. M. Watson, for appellant; Mr. Green B. Raum for appellee.

Mr. Justice WOODS delivered the opinion of the court.

By section 2 of the act of March 1, 1879, entitled "An act to amend the laws relating to internal revenue" (chap. 125, 20 Stat. at L., 327), the twelfth section of the act of February, 1875 (chap. 26, 18 Stat. at L., 307), was amended so as to read as follows:

"Each collector of internal revenue shall be authorized to appoint by an instrument in writing under his hand as many deputies as he may think proper, to be com-

compensated for their services by such allowances as shall be made by the Secretary of the Treasury upon the recommendation of the Commissioner of Internal Revenue. Allowances shall also be made in like manner for salary and office expenses of collectors, all of which shall be in lieu of the salary and commissions heretofore provided by law: *Provided, however,* That the salaries of collectors shall be fixed at \$2,000 each per annum where the annual collections amount to \$25,000 or less, and shall, by the Secretary, on the recommendation of the Commissioner, be graduated up to the maximum limit of \$4,500, which latter sum shall be allowed in all cases where the collections amount to \$1,000,000 or upward. * * * *Provided,* That the Secretary of the Treasury, on the recommendation of the Commissioner of Internal Revenue, be authorized to make such further allowance from time to time as may be reasonable in cases in which from the territorial extent of the district or from the amount of internal duties collected it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered. But the total net compensation of a collector shall not in any case exceed \$4,500 a year, and no collector shall be entitled to any portion of the salary pertaining to the office unless such collector shall have been confirmed by the Senate except in cases of commissions to fill vacancies occurring during the recess of the Senate."

By section 5 of the same act it was provided as follows:

"That section 3314 of the Revised Statutes shall be amended by striking out all after said number and substituting the following: 'The books of tax-paid stamps issued to any collector shall be charged to his account at the full value of the tax on the number of gallons represented on the stamps and coupons contained in said books, and every collector shall make a monthly return to the Commissioner of Internal Revenue of all tax-paid stamps issued by him to be affixed to any cask or package containing distilled spirits on which the tax has been paid, and account for the amount of the tax collected, and when the said collector returns to the Commissioner of Internal Revenue any book of marginal stubs, which it shall be his duty to do as soon as all the stamps contained in the book when issued to him have been used, and accounts for the tax on the number of gallons represented on the stamps and coupons that were contained in said book, there shall be allowed to the collector a commission of one-half of 1 per cent. on the amount of such tax in addition to any other commission by law allowed: *Provided,* That the total net compensation of collectors as fixed by this title shall not be thereby increased.'"

This so-called amendment was simply a reenactment of section 3314, without any change whatever.

While these sections were in force, to wit, during the five fiscal years beginning with July 1, 1879, and ending with June 30, 1884, William J. Landram, the appellee, was the collector of internal revenue for the eighth district of Kentucky. During that period he received a salary as follows: For the years ending, respectively, on June 30, 1880, and June 30, 1883, \$3,000 for each year; for the years ending, respectively, June 30, 1881, and June 30, 1882, \$2,875 for each year; and for the year ending June 30, 1884, \$4,375. During each of the years above mentioned Landram collected a large amount of taxes on distilled spirits by the sale of tax-paid stamps, on which, limiting his total net compensation for each year to \$4,500, the commissions for the whole five years to which he would have been entitled, on the assumption that section 3314 of the Revised Statutes still remained in force, would amount to \$4,724.78. The accounting officers of the Treasury refused to allow him this sum, or any part of it. He therefore brought this suit against the United States in the Court of Claims to recover it.

Upon a finding of the foregoing facts the Court of Claims gave him judgment for said sum, and the United States appealed.

The policy of allowing a commission of one-half of 1 per cent. on taxes collected from distilled spirits by the sale of tax-paid stamps was begun by the act of July 20, 1868 (chap. 185, 15 Stat. at L., 125), which required that the taxes on distilled spirits should be paid by affixing to the packages in which they were contained the prescribed stamps and "allowed a commission of one-half of 1 per cent. on the amount of the tax on spirits distilled after the passage of" that "act in addition to any other commission by law allowed, which" should "be equally divided between the collector receiving the tax and the assessor of the district in which the distilled spirits were produced."

This policy was continued by the act of December 24, 1872 (chap. 13, 17 Stat. at L., 401), which after abolishing by section 1 the office of assessor of internal revenue, provided by section 6 that the commission of one-half of 1 per cent. allowed by the act of July 20, 1868, to the collector and assessor should be paid to the collector, provided that "the total net compensation of collectors" should not be thereby increased. The provisions of the acts of 1868 and 1872 remained in force until June 22, 1874, when, having been embodied in section 3314 of the Revised Statutes, they were reenacted. By the act of March 1, 1879, section 3314, though still in force, was

reënacted in *totidem verbis*, and by the act of May 28, 1880 (chap. 108, 21 Stat. at L., 145), entitled "An act to amend the laws in relation to internal revenue," the same section was repeated and reënacted word for word.

It is asserted by counsel for appellee, and not disputed by counsel for appellant, that prior to the passage of the act of March 1, 1879, *ubi supra*, the right of collectors of internal revenue to the one-half of 1 per cent. commissions on taxes collected on distilled spirits was never questioned. After June 22, 1874, the commissions were allowed and paid solely by virtue of the provisions of section 3314 of the Revised Statutes.

On the passage of the act of March 1, 1879, the right of the collectors to commissions was for the first time disputed. It seems to us clear that this right was not taken away by that act.

When it was passed section 3314 of the Revised Statutes allowing the commissions was in force. It was a plain, unambiguous provision, whose meaning had not been doubted and which was not open to construction. Being in force, there was no reason for its reënactment by the act of March 1, 1879, except to express in a most unmistakable manner the purpose of Congress that it should continue in force, and should not be considered as in any way modified by that act. This purpose Congress reiterated by repeating and reëacting the same section in the act of May 28, 1880. By virtue of the provisions thus enacted and reënacted the right of the appellee to the commissions would seem to be plain.

The only ground upon which the appellants try to escape this conclusion is by an argument which amounts to this: That Congress, by section 2 of the act of March 1, 1879, intended virtually to repeal by implication that part of section 3314 of the Revised Statutes relating to collectors' commissions, which, by section 5 of the same act, it deliberately, and word for word, reënacted. Conceding that this argument is entitled to any weight, it is to be noted that, if the provision referred to was repealed by the same act which reënacted it, it was as an independent enactment, and without change or qualification again restored to the statute book by the subsequent act of May 28, 1880, *ubi supra*, where it has remained ever since, covering more than four-fifths of the period for which the appellee claims the commissions sued for in this case.

But it is not necessary to resort to the act of May 28, 1880, to sustain the right of the appellee to any part of his commissions.

It is a settled rule of construction that "one part of the statute must be so construed by another that the whole may, if possible, stand—*ut res magis valeat quam pereat* (1 Bl. Com., 89); or, as otherwise expressed, that every clause in a statute should have effect; one portion should not be placed in antagonism to another. (*Brooks v. Mobile School Commissioners*, 31 Ala., 227.) Applying this rule to the interpretation of sections 2 and 5 of the act of March 1, 1879, so far as they relate to the compensation of collectors, their meaning appears to be: First, that salaries shall be allowed the collectors, graded according to the amount of their annual collections, the minimum salary being \$2,000 and the maximum \$4,500; second, that in addition to the salary a commission of one-half of 1 per cent. on the taxes on spirits collected by sales of tax-paid stamps shall be allowed collectors, provided that their total net compensation shall not be more than \$4,500; and, third, that the Secretary of the Treasury may make further allowances, provided the limitation of \$4,500 as the total net compensation of the collector is not exceeded. Thus construed, both sections of the statute are given effect without violence to the language or spirit of either.

No construction of the two sections would be so incongruous and unreasonable as to hold that Congress deliberately re-enacted the provision of section 3314, allowing commissions to the collectors without meaning anything by it; for the case of the appellants can not be sustained unless we virtually expunge from the statute book, after it had, *ex industria*, been put there by Congress, the provision allowing to the collectors commissions on taxes collected by the sale of tax-paid spirit stamps.

Judgment affirmed.

True copy. Test:

JAMES H. MCKENNEY,
Clerk, Supreme Court, United States.

APPENDIX B.

UNITED STATES INTERNAL REVENUE,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., September 15, 1886.

SIR: As per the request of your letter of the 11th instant, I send you the following tabular statement of the amount of salary and commissions and special allowances in

lien thereof with which you appear to have been credited for the several years specified, viz:•

	Salary.	Commissions.
For year ending June 30:		
1868.....	\$1, 500	\$2, 682. 22
1869.....	1, 500	2, 928. 46
1870.....	1, 500	4, 753. 59
1871.....	1, 500	3, 500. 07
1872.....	1, 500	1, 442. 81
1873.....	1, 500	3, 622. 06

For year ending June 30 (as special allowance):

1874.....	\$2, 500. 00
1875.....	3, 000. 00
1876.....	3, 000. 00
1877.....	2, 890. 29
1878.....	2, 750. 00
1879.....	2, 750. 00
1880.....	3, 060. 00

Very respectfully,

M. J. DURHAM,
Comptroller.

By I. R. GARRISON,
Deputy Comptroller.

W. J. LANDRAM, Esq.,
*Late Internal-Revenue Collector and Disbursing Agent,
Eighth District of Kentucky, Lancaster, Ky.*

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, D. C., December 16, 1890.

I hereby certify that the records of this office show that the sales of internal revenue tax-paid spirit stamps in the eighth collection district of Kentucky (William J. Landram, collector) during the fiscal years hereinafter stated were as follows:

For the fiscal years ended June 30—	Amount collected.
1874.....	\$150, 772. 30
1875.....	241, 827. 70
1876.....	208, 656. 30
1877.....	177, 639. 30
1878.....	143, 319. 60
1879.....	147, 042. 00

JOHN W. MASON,
Commissioner.

J. E. MERRIAM.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 8012.]

The Committee on Claims, to whom was referred the bill (H. R. 8012) for the relief of J. E. Merriam, having had the same under consideration, submit the following report:

On the 23d day of June, 1882, J. E. Merriam was appointed keeper of the Northwest Point Royal Shoals light station, and at the same time he was given the care and custody of the Government property at Southwest Point Royal Shoals light station, both on the North Carolina coast. He held the position of keeper of the Northwest Point Royal Shoals light-house until May 31, 1885, when he resigned the same, but he continued to care for the property of the Government at Southwest Point Royal Shoals light station for two years after his said resignation, and he has never been paid anything therefor; he cared for the same and ought to be paid a reasonable compensation for his labor, but your committee are of the opinion that \$120 is a fair remuneration for his services.

Your committee, therefore, report that the said bill be amended by striking out the words "two hundred and forty" and inserting in lieu thereof "one hundred and twenty," and as so amended it do pass.

○

JAMES J. HAYNES.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 2857.]

The Committee on Claims, to whom was referred the bill (H. R. 2857) authorizing the Treasury of the United States to refund certain duties paid by James J. Haynes, respectfully report:

This bill was referred to the House Committee on Claims in the Fiftieth and Fifty-first Congresses, and by both committees reported favorably.

James J. Haynes, the claimant, imported into the United States from Mexico at the port of Laredo, between July 14, 1883, and February 24, 1884, a commodity called istle, upon which he was charged and paid certain custom duties. It afterward appeared that said customs duties were erroneously exacted of him and that the istle imported was a nondutiable article; all of which appears from the letter of the Secretary hereto attached.

Your committee recommend that the bill do pass.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 2, 1888.

SIR: The Department is in receipt of your letter of the 28th ultimo, in which you request to be informed as to whether there has been a ruling of the Secretary of the Treasury that istle was a nondutiable article, and in reply you are informed that under date of the 11th of April, 1884, it was held by Judge Folger, late Secretary of the Treasury, that the "dried fiber of a species of American aloe or century plant, which is procured by reducing the leaves to a pulp and then drawing out the fiber," and which was commercially known as istle, was entitled to free entry under the provision of the freelist for "dried fibers * * * which are not edible * * * and not advanced in value or condition by refining or grinding, or by other process of manufacture." A copy of such decision is herewith inclosed.

I would also state with reference to the bill inclosed with your letter, viz, H. R. 2966, entitled "A bill authorizing the Secretary of the Treasury of the United States to refund certain duties paid by James J. Haynes" on importations of istle from Mexico into the United States, in the port of Laredo, that the istle imported by the said Haynes was, at the time of its importation, decided by the collector of customs to be liable to duty, and that duty was duly assessed and collected thereon.

I would further state that the reason why duties so assessed on the said merchandise, and paid by Mr. Haynes, were not refunded, is that the importer failed to comply with the requirements of the statute (section 2931 of the Revised Statutes) as to protesting, appealing, and instituting suit, which, under the express requirements of said statute, rendered the decision of the collector of customs as to such assessment final and conclusive.

Respectfully yours,

I. H. MAYNARD,
Assistant Secretary.

Hon. S. W. T. LANHAM,
U. S. House of Representatives.

[The text on this page is extremely faint and illegible. It appears to be a multi-paragraph document, possibly a letter or a report, with several lines of text visible across the page. The content is too faded to transcribe accurately.]

DENIS KELLY.

MAY 24, 1892.—Laid on the table and ordered to be printed.

Mr. PAGE, of Maryland, from the Committee on Naval Affairs, submitted the following

ADVERSE REPORT:

[To accompany H. R. 892.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 892) for the relief of Denis Kelly, having duly considered the same, submit the following report:

The facts are contained in the letter of the honorable the Secretary of the Navy, dated February 2, 1892, and a sworn statement of the said Denis Kelly, herewith submitted:

NAVY DEPARTMENT,
Washington, February 2, 1892.

SIR: I have the honor to acknowledge the receipt of your communication of the 27th ultimo, inclosing a copy of H. R. bill No. 892, Fifty-second Congress, "for the relief of Denis Kelly."

In compliance with your request for information as to the record of service of Denis Kelly, and as to whether he can be relieved of the charge of desertion under the provisions of the act of Congress "to relieve certain appointed or enlisted men of the Navy and Marine Corps from desertion," approved August 14, 1880, I have to state that it appears from an examination of the records in the case of Kelly that he enlisted in the Navy, as a landsman, March 14, 1865, for two years; served on board the U. S. S. *William G. Anderson*, *Choctaw*, *Potomac*, and *J. C. Kuhn*, and deserted from the last-named vessel March 17, 1866.

Inasmuch as the act of Congress above referred to requires that an applicant for relief thereunder, who deserted the service prior to the expiration of his term of enlistment, shall have served faithfully until the 1st of May, 1865, having previously served six months or more, or shall have been prevented from completing his term of service by reason of wounds received or disease contracted in the line of duty, and it appearing from the facts of record, as stated above, that Kelly did not enlist in the Navy until March 14, 1865, and there being no evidence to show that he was prevented from completing his term of service by reason of wounds received or disease contracted in the line of duty, or that the charge of desertion was erroneously entered, his case is not one which comes within the provisions of the act of August 14, 1888, and relief can not therefore be granted him under that act.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Hon. HENRY PAGE,
Chairman Subcommittee Naval Affairs, House of Representatives.

GENERAL AFFIDAVIT.

STATE OF IOWA, *Cass County*, ss:

In the matter of claim of Denis Kelly, a landsman in U. S. Navy.

Personally came before me, a notary public in and for aforesaid county and State, Denis Kelly, aged sixty years, and citizen of the town of Brayton, county of Audu-

bon, State of Iowa, well known to be reputable and entitled to credit, and who, being duly sworn, declares in relation to aforesaid case as follows:

That I enlisted on the 14th day of March, 1865, and served on the following-named vessels, to wit: *Choctaw*, *Wm. G. Anderson*, *Potomac*, and *J. C. Kuhn*, until March 17, 1866, at which time I was sick and got liberty to go ashore, and did not go back for the reason that I understood when I enlisted that I would be discharged as soon as the war was over, notwithstanding my enlistment was for two years, and the war was virtually ended in April, 1865, and as I had already served over one year, and nearly all that time after the war was over, I considered my service was no longer needed. And further, I understood when the ship landed at New York we were to be discharged; and further, I was sick and unable to do work for more than six months after I left the ship, and my health has been very poor ever since I left the service and have been a continual sufferer from hemorrhoids each year since I came out of the service, and I verily believe had I not left the ship when I did I would have died before my time of service was out.

DENIS KELLY.

Sworn to and subscribed before me this day by the above-named affiant; and I certify that I read said affidavit to said affiant, and acquainted him with its contents before he executed the same. I further certify that I am in nowise interested in the case, nor am I concerned in its prosecution; and that said affiant is personally known to me; that he is a creditable person and so reputed in the community in which he resides.

Witness my hand and official seal this 23d day of August, 1890.

[SEAL.]

JAMES PUGH,
Notary Public.

Your committee appends the affidavits of Mary McGrath, John Kelly, and Denis Kelly.

Upon the facts shown by these papers your committee report unfavorably on the bill and recommend it do not pass.

ATLANTIC, IOWA, May 16, 1892.

STATE OF IOWA, *Cass County*, ss:

I, Mary McGrath, being first duly sworn according to law, depose and say that I formerly lived in Hamilton, Hancock County, Illinois, and was living there in the year 1866; that I am well acquainted with Denis Kelly. I was acquainted with him at the time he enlisted in the Navy as landsman, March, 1865. I saw him when he returned home to Hamilton, Hancock County, Illinois, at which time he was very sick, and remained sick for more than six months, and was wholly unable to do any work, and unfit to travel without danger to his life. He made no effort to conceal the fact that he had returned home; but, on the contrary, his return home was publicly known to everybody living in that part of the country. I have been acquainted with him ever since, and know him to be an honest and upright man, and that his reputation as an honest man and good citizen, among his neighbors, is good. His health has been poor ever since he left the Navy, and he is still in bad health.

MARY McGRATH.

Sworn and subscribed to before me by Mary McGrath this 16th day of May, A. D., 1892.

[SEAL.]

E. M. WILLARD,
Notary Public, Cass County, Iowa.

ATLANTIC, IOWA, May 16, 1892.

STATE OF IOWA, *Cass County*, ss:

I, Dennis Kelly, being first duly sworn according to law, state, in addition to my affidavit made on the 23d day of August, 1890, that when I left for home in March, 1866, I understood and believed that the Government had no further use for me, and that they were only keeping us there until such time as our discharges could be made out, and I supposed that my discharge would be made and sent to me after I returned home. I made no secret of going or the place where I was going. I returned directly to my home in Hamilton, Hancock County, Illinois. I made no attempt to conceal the fact that I had returned home, and my return there was known

to everybody. I didn't understand or suppose that I was deserting. I was in that condition of health at that time that I felt I must get home as soon as I could, that I was very weak, and my hold upon life I thought at that time was very slight.

DENIS KELLY.

Sworn to before me and in my presence by Denis Kelly, this 16th day of May, 1892.

[SEAL.]

E. M. WILLARD,
Notary Public, Cass County, Iowa.

STATE OF IOWA, *Audubon County*, ss:

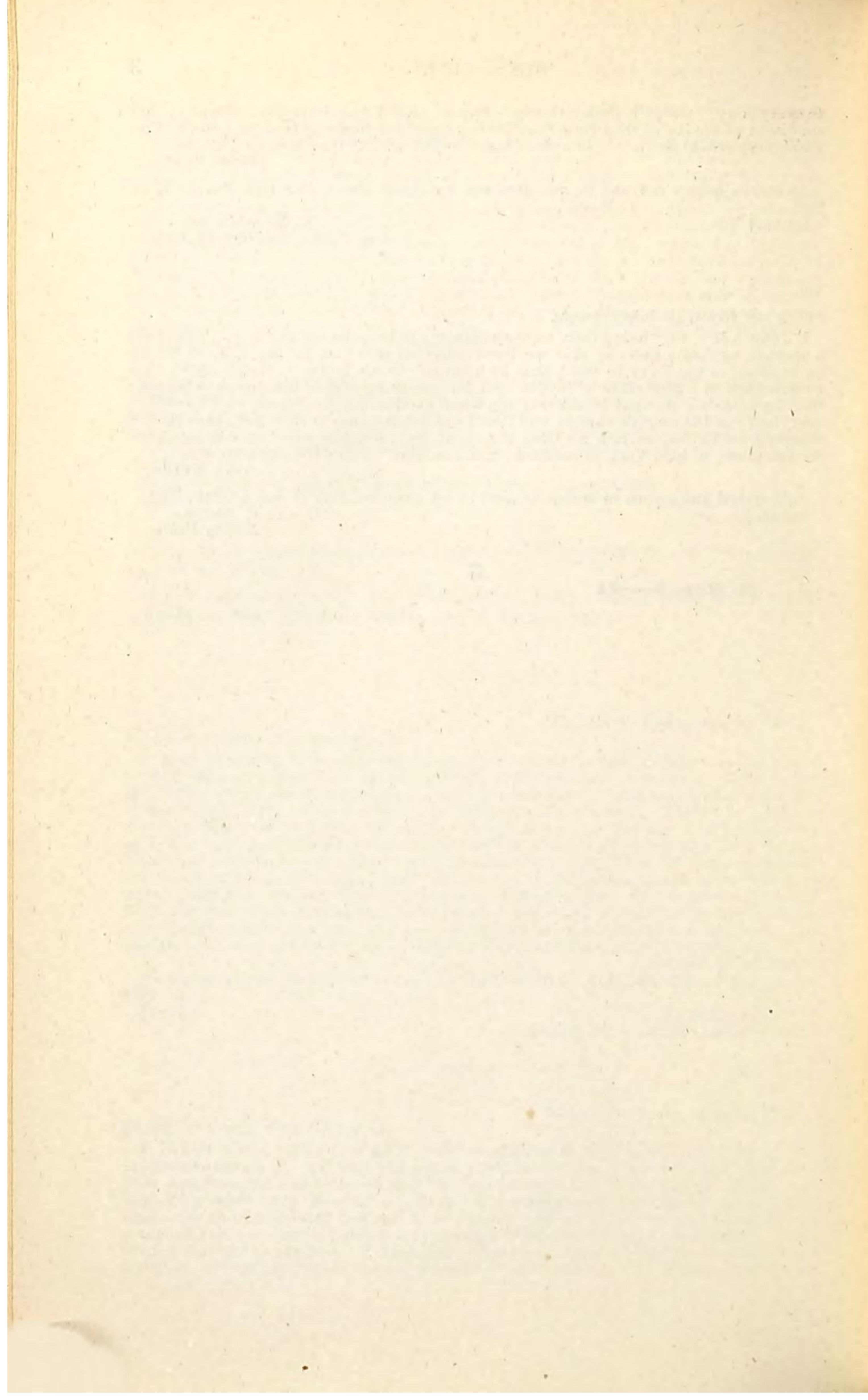
I, John Kelly, first being duly sworn according to law, depose and say: That I am a brother of Denis Kelly's; that we lived together previous to the time at which he enlisted in the Navy in 1865; that he returned to my house in March, 1866; that he was then in a poor state of health and has never recovered his former strength; that he made no attempt to conceal his whereabouts and his return was known to everybody in the neighborhood; and that I did not suppose at that time that he had deserted, as he had written me from Pensacola Bay, Florida, some time before, that he was going to New York to be discharged and that he was then coming home.

JOHN KELLY.

Subscribed and sworn to before me and in my presence this 18 day of May, 1892.

[SEAL.]

D. C. SMITH,
Notary Public.



HEIRS OF JOHN HOWARD PAYNE.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 263.]

The Committee on Claims, to whom was referred House bill 1187, having had the same under consideration and having made favorable report on the same, now recommend that said H. R. 1187 lie upon the table, and that Senate bill 263 be substituted therefor, and that the House concur with the Senate in the passage of said Senate bill 263.

○

OFFICERS AND CREW OF U. S. REVENUE CUTTER GALLATIN.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 2001.]

The Committee on Claims, to whom was referred the bill (H. R. 4504) to reimburse the officers and crew of the United States revenue cutter *Gallatin*, having had the same under consideration, report as follows:

It appears from the statement of Capt. Gabrielson, of the revenue cutter *Gallatin*, that the cutter was wrecked January 6, 1892, on a sunken and unbuoyed ledge off Eagle Head, Mass.

At the time of the wreck the crew consisted of seven officers, one pilot, and thirty men and boys, as appears by list hereto annexed and marked Exhibit A.

It also appears that said wreck was not caused by any fault or negligence of officers or crew and that by reason of the sudden sinking and abandonment of the cutter the said officers and crew lost all clothing and other necessary property which they had on board.

The claim having been recommended by the Secretary of the Treasury in a letter which is annexed to this report and marked Exhibit B. and numerous precedents having been established, as is shown by a report to the Forty-sixth Congress, which is hereto annexed and marked Exhibit C, the committee recommend that Senate bill 2001 be substituted for H. R. 4504 and that the House concur in the passage of said Senate bill 2001.

EXHIBIT A.

Muster roll of officers and crew attached to the revenue steamer Gallatin when wrecked, January 6, 1892.

Name.	Rank or rate.	Name.	Rank or rate.
Eric Gabrielson.....	Captain.	Chas. Halsh	Seaman.
J. F. Wild.....	Second lieutenant.	M. Olsen	Do.
F. H. Dimock.....	Do.	E. Walsh	Do.
A. R. Hasson.....	Third lieutenant.	A. Sakariason	Do.
A. L. Churchill.....	Chief engineer.	O. Michelson	Do.
F. E. Owen.....	First assistant engineer.	E. Schroder.....	Do.
H. W. Spear.....	Second assistant engineer.	A. Johannesen	Do.
H. E. Wooster.....	Pilot.	S. Rodrigues.....	Cabin steward.
Thos. Larsen.....	Boatswain.	T. Ar. Tang	Ward-room steward.
J. Jacobson.....	Carpenter.	John Young.....	Cook.
A. Sears.....	Master-at-arms.	P. Portas	First-class boy.
P. Anderson.....	Quartermaster.	H. Olsen.....	Do.
Wm. Schrieber.....	Do.	J. McCarty.....	Second-class boy.
P. Hogen.....	Coxswain.	J. J. Conway.....	Do.
J. Anderson.....	Do.	W. J. H. Dallaghan	Fireman.
A. Borjesson.....	Seaman.	K. P. Pettersen.....	Do.
H. Nielson.....	Do.	C. W. Larsson.....	Do.
E. Wiold.....	Do.	Gouees	Do.
		Thos. Turner.....	Coal-passer.
		A. Laken.....	Do.

EXHIBIT B.

TREASURY DEPARTMENT, *January 26, 1892.*

SIR: I have the honor to acknowledge the receipt of the letter, dated the 20th instant, from the Committee on Commerce, inclosing copy of Senate bill 1663, providing for the payment to the survivors of the officers and crew of the wrecked revenue cutter *Gallatin* a sum equal to the losses incurred by them by the wreck of said vessel, with the request that the committee be furnished with my suggestions touching the merits of the bill and the propriety of its passage.

In reply, I have to state that at the time the *Gallatin* was wrecked there were on board 6 officers, the pilot, and a crew of 29 men and boys. The carpenter was killed by the falling of the smokestack. The 28 surviving members of crew have submitted to the Department certified statements of the losses sustained by each on account of the wreck, ranging from \$44.85 to \$206.54, the total amount being \$3,105.99. No statement of losses has yet been received from the officers and pilot.

I think that relief of some kind should be extended by the Government to the officers and crew of the *Gallatin*, to compensate them for the losses they sustained on account of the wreck of the vessel, and I earnestly recommend the passage of Senate bill 1663, which is herewith returned.

Respectfully yours,

O. L. SPAULDING,
Acting Secretary.

Hon. WM. P. FRYE, U. S. S.,
Chairman, Committee on Commerce, U. S. Senate.

EXHIBIT C.

[Senate Report No. 412, Forty-sixth Congress, second session.]

The Committee on Military Affairs, to whom was referred the bill (S. 74) for the relief of Lieut. Frank P. Gross, have duly considered the same, and submit the following report:

This bill directs the Secretary of the Treasury to pay to First Lieut. Frank P. Gross, United States Army, \$2,000, in full for all losses sustained by him by the burning of his quarters at Fort Clark, Texas, about April 19, 1869. Your committee referred the bill to the Secretary of War for information, and received from him the following communication:

WAR DEPARTMENT,
Washington City, May 16, 1879.

SIR: I have the honor to return Senate bill 74, for the relief of Lieut. Frank P. Gross, Ninth Cavalry, inclosed in your letter of the 1st ultimo, and to invite your attention to the inclosed report of the Adjutant-General, furnishing all the information in the case in possession of this Department.

As it appears this officer lost all his personal effects by the burning of his quarters at Fort Clark, it would seem that the bill should receive favorable consideration.

Very respectfully, your obedient servant,

G. W. MCCRARY,
Secretary of War.

Hon. F. M. COCKRELL,
Committee on Military Affairs, United States Senate.

ADJUTANT-GENERAL'S OFFICE,
Washington, May 15, 1879.

The Hon. SECRETARY OF WAR:

SIR: I have the honor to return, herewith, communication from Hon. F. M. Cockrell, of the Senate Military Committee, dated April 1, 1879, covering Senate bill 74, for the relief of Lieut. F. P. Gross, and report as follows:

No information as to the fire at Fort Clark, Texas, on or about April 19, 1869, by which the quarters of Lieutenant Gross were destroyed, has been found, upon examination, in this office or that of the Quartermaster-General, or at a post or department headquarters.

It having been reported by the present post commander that Capt. John M. Bacon, Ninth Cavalry, was commanding the post, and Lieut. F. P. Gross, Ninth Cavalry,

post adjutant, at the date in question, the matter was referred to Colonel Bacon (now aid-de-camp to the General of the Army), who reports as follows, under note of May 14, 1879:

"Respectfully returned to the Adjutant-General, with the information that I was present and commanding the post of Fort Clark, Texas, on or about April 19, 1869, at which time the quarters occupied by Lieut. F. P. Gross, Ninth United States Cavalry, were destroyed by fire.

"Lieutenant Gross had been regularly assigned for quarters to a log house of two rooms, with thatched roof; the fire originated in the roof, composed of dry grass or straw, by sparks from his cooking stove, and burned with such rapidity that the occupants (Lieutenant Gross, wife and daughter) only escaped with their lives, losing their household goods and personal effects.

"The efforts of the garrison were directed (to ?), and succeeded in, saving the valuable hospital, the nearest building.

"Lieutenant Gross and family were the only sufferers by the fire."

I have the honor to be, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,

Adjutant-General.

The claimant, Gross, filed with his bill the affidavit of Col. John M. Bacon, dated January 1, 1870, who testifies that Lieutenant Gross was regularly assigned to the quarters, and that they were destroyed by fire on or about April 19, 1869, and that nearly all the personal effects of Lieutenant Gross and family were destroyed at the same time, and that the fire was purely the result of accident, caused by the combustible material composing the roof of the building; also, the affidavit of F. S. Davidson, first lieutenant Ninth Cavalry, and late acting assistant quartermaster, Fort Clark, Texas, who testifies that the quarters of Lieutenant Gross at Fort Clark, Texas, were burned on or about April 19, 1869, and, with the building, nearly all his personal effects, together with the wardrobe of his wife and child, and that the fire was the result of accident, and entirely unavoidable on account of the inflammable material used in roofing the building, and that the building was old and almost entirely unserviceable as officers' quarters, having been used by troops of the Fourth Cavalry and others as barracks. Also, the affidavits of Orville Burke, late captain Company C, Forty-first United States Infantry, and of Jennie Burke, his wife, each dated March 25, 1879. Captain Burke testifies that he was stationed at Fort Clark, Texas, and that on or about April 19, 1869, the quarters at that post regularly assigned to and occupied by Lieutenant Gross were destroyed by fire, and that, his quarters being contiguous, he was the first to discover the fire in the thatching composing the roof, and rushed into the quarters and found the ceiling of the quarters already on fire, being composed of muslin or canvas, and that burning pieces were falling, so that, although every effort was made, only a trunk containing a few articles was saved; and that, in his opinion, the fire occurred from sparks blown from the kitchen chimney of the hospital building adjacent, and that when he first discovered the blaze it was near the comb of the roof at the end next to the hospital, and that a strong wind was blowing at the time; and that he was well acquainted with Lieutenant Gross and his family and his household affairs, and knows that Gross "was well supplied with all articles necessary to the comfort of his family, and that he was especially well supplied with clothing, military and otherwise, and that his wife and daughter were still more abundantly provided for, all of which, with trifling exceptions, were consumed with the quarters," and that he is satisfied that Gross's loss could not have been less than two thousand dollars, and that it was not the result of carelessness or negligence on the part of any member of his family; and that, from his knowledge of the facts, the said fire was the immediate result of neglect on the part of the Government—on the part of its officers—in assigning Lieutenant Gross to quarters which were so peculiarly liable to be destroyed by fire, owing to their proximity to the hospital kitchen flue already mentioned and the thatching of grass or straw of which the roof was composed. Mrs. Jennie Burke testifies that she was intimate with the family of Lieutenant Gross, and had personal knowledge of the affairs of his family, and "that in household effects they were abundantly supplied for a long residence on the frontier, and that in the matter of clothing the family was particularly well supplied, especially so in the case of Mrs. Gross, who had many valuable dresses, and in other matters of dress making up a lady's wardrobe she was equally well supplied; so that from her knowledge of the expense attending the purchase of such an outfit as they had, the loss of the family by fire must have been considerably above two thousand dollars; and "that a very small quantity of all they possessed was saved from the flames;" and that the quarters were old and dilapidated, roofed with a thatching of grass and ceiled with muslin, and had low chimney-flues, barely extending two feet above the thatching, and she believes the fire originated from a spark being blown into the thatching; and that Lieutenant Gross and family were very

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careful about fire, and that "it occurred through no want of care on their part, but was liable to be burned at any time by flying sparks from the flues of the hospital kitchen, over which Lieutenant Gross had no control."

Lientenant Gross furnishes the following schedule of property lost by said fire, to wit:

Schedule of property lost by Frank P. Gross by the burning of his quarters at Fort Clark, Texas, on or about the 19th day of April, 1869.

One uniform coat, \$50; one uniform coat, \$30; one officer's blouse, \$25.....	\$105.00
One pair uniform trowsers, \$14; and pair uniform trowsers, \$10; one vest, \$7.50; one uniform hat complete, \$17.50.....	49.00
One suit citizen's clothes, \$45; one citizen's overcoat, \$35.....	80.00
One pair boots, \$14; one pair boots, \$8; eight white shirts, \$2.50 each, \$20; four knit undershirts, \$2 each, \$8.....	50.00
One-half dozen gauze undershirts, \$1.50 each, \$9; three pairs red flannel drawers, \$7.50.....	16.00
Three pairs knit drawers, \$2 each, \$6; one dozen pairs socks, \$6.....	12.00
Eleven pairs linen drawers, \$1.50 each, \$16.50; two dozen handkerchiefs, \$9, \$18; one dozen collars, \$4.....	38.50
One-half dozen pairs Berlin gloves, \$5, \$2.50; one-half dozen pairs cuffs, \$10, \$5; two razors, \$2 each, \$4.....	11 50
Strap, \$1; mug and brush, \$1; Scott's Military Dictionary, \$6.50; DeHart's Court Manual, \$4.....	12.50
Hahan's Engineering, \$2; Jomini's Art of War, \$3; Halleck's Art of War, \$1.75.....	7.75
Halleck's Infantry Law, \$3; two volumes Ladies' Repository, \$3.50 each, \$7; one volume Godey, \$4.50.....	14.50
Bible, \$2.50; two testaments, \$2; two photograph albums, \$2.50 each, \$5..	9.50
One rocking-chair, \$6.50; three folding chairs, \$5 each, \$15; one folding chair, \$3; four camp chairs, \$1.50, \$6.....	30.50
Thirty-five yards carpets, \$1.50, \$52.50; one cooking stove, \$55; one wash-boiler, \$3.50.....	111.50
Three bread-pans, 50 cents each, one porcelain kettle, \$2.75; one teakettle, \$2.25; one dish and one bread-pan, \$2.50 each, \$5.....	11.50
One coffee-dripper, \$3.25; six tin cups, 50 cents; six tin plates, 50 cents; one dipper, 50 cents; two jelly tins, 50 cents.....	5, 25
Two jelly-molds, \$1.50 each, \$3; one kitchen table, \$4.....	7.00
Five tablecloths, \$4 each, \$20; one table-cover, \$4; three dozen napkins, \$4 each, \$12.....	36.00
One set stone china, \$40; one silver-plated caster, \$24; one molasses pitcher, \$5.....	69.00
One dozen plated dining forks, \$10; one dozen ivory-handled knives, \$12..	22.00
One ivory-handled carving set, \$7.50; one dozen plated tablespoons, \$10..	17.50
One dozen silver teaspoons, \$20; four silver tablespoons, \$4 each, \$16.....	36.00
One silver fork, \$5; one silver pickle-fork, \$3.50; one pair silver salt spoons, \$3.....	11.50
One silver butter-knife, \$5; one silver napkin-ring, \$8.....	13.00
Three white spreads, \$5 each, \$15; two pairs white blankets, \$7.50 each, \$15; five pairs linen sheets, \$4 each, \$20.....	50.00
One pair linen sheets, \$7.50; five pairs cotton sheets, \$3 each, \$15; three pairs linen pillow cases, \$2.50 each, \$7.50.....	30.00
Two bolster cases, \$1, \$2; four plain pillow cases, 50 cents, \$2; two pillows, \$2.50 each, \$5.....	9.00
One bolster, \$3; one dozen towels, \$7.50; one dozen towels, \$4; thirty yards muslin, 20 cents, \$6.....	20.50
One lamp, \$4.50; one lamp, \$3; one chamber set, \$6.50.....	14.00
One green silk dress, \$75; one India silk dress, \$35; one black and white silk dress, \$45.....	155.00
One silver-grey dress, \$60; one bombazine dress, \$65; one alpaca dress, \$40..	165.00
One empress-cloth dress, \$60; one waterproof dress, \$25.....	85.00
One black silk wrapper, \$30; one plaid flannel wrapper, \$20.....	50.00
One riding habit, \$40; two muslin dresses, \$10, \$20; one linen lawn dress, \$10.....	70.00
Two calico dresses, \$4, \$8; one cloak, \$25; one brown felt hat, \$6.....	39.00
One sun hat, \$2.50; one parasol, \$5; one set furs, \$100.....	107.50
Six linen chemises, \$5, \$30; ten cotton chemises, \$1.50, \$25; eight night-gowns, \$3, \$24.....	79.00
Two combing saques, \$4, \$8; six pairs linen drawers, \$1.50, \$9; eight pairs cotton drawers, \$1, \$8.....	25.00

One corset, \$5; two corset-covers, \$2, \$4; four pairs lisle-thread stockings, \$2.50, \$10	\$19.00
Two pairs silk stockings, \$3.50, \$7; ten pairs cotton stockings, 60 cents, \$6; one and one-half dozen collars, \$3, \$4.50	17.50
One dozen pairs cuffs, \$6; one point lace collar, \$35; one pair lace under-sleeves and collar, \$15	56.00
One dozen handkerchiefs, \$7.50; four handkerchiefs, \$1.50; four handkerchiefs, \$1, \$4	17.50
Two pairs shoes, \$5, \$10; one small trunk, \$5; one leather valise, \$8	23.00
One set jet jewelry, \$12; one pair cameo earrings, \$25; one set coral, \$50 ..	87.00
One gold thimble, \$8; one side saddle, \$50	58.00
One child's silk dress, \$15; one brown dress, \$12	27.00
One garnet empress cloth dress, \$8; two Marseilles dresses, 1 \$12, 1 \$8	28.00
Six common dresses, \$1.50, \$9; six white aprons, \$1.50, \$9; ten pairs draw-ers, 45 cents, \$7.50	25.50
Eight pairs stockings, \$1, \$8; three night-gowns, \$1, \$3; two cloaks, \$5, \$10	21.00
Eight pocket handkerchiefs, 25 cents, \$2; one pair shoes, \$3; one hat and feather, \$6	11.00
One set jewelry (child's), \$15	15.00
	2,081.50

I certify on honor that the foregoing enumerated articles were burned with my quarters at Fort Clark, Texas, at the time above mentioned, and that the prices set opposite each item are correct and just to the best of my recollection and belief. I further certify that my loss was considerably greater than this paper shows, as, after the lapse of so many years, neither my wife or myself can recall every article destroyed, and many will not admit of being inventoried, so I confidently believe that two hundred dollars in addition to the above would not cover our entire loss.

FRANK P. GROSS,
First Lieutenant, United States Army. (Retired.)

Your committee find that the said fire occurred without any fault or negligence on the part of said Gross or family, and could not have been prevented by the exercise of reasonable care and attention and due diligence on the part of said Gross, and that he can in nowise be chargeable with any responsibility therefor.

The quarters occupied by him were old and of exceedingly inflammable material, very easily ignited, and were set on fire by sparks from the hospital chimneys, which was liable to occur at any time when the wind was blowing in the direction from the hospital toward the quarters.

Your committee further find that Lieutenant Gross was assigned to these quarters, and they were the only shelter, protection, or quarters furnished him, and under his orders he had no discretion but to occupy them.

Your committee gave due consideration to this case and made as thorough examination as time and opportunities would afford as to the policy and precedents of the Government in similar cases. Your committee find that by "An act for the relief of sundry persons in the service of the United States in consequence of the destruction of their tools by fire at the navy-yard, approved March 3, 1815" (6 Statutes at Large, page 155), a sum not to exceed \$5,000 was appropriated to pay "all claims for losses that have been sustained by artificers, mechanics, and other workmen in the employ or service of the United States for tools and other articles essential to and connected with their trade and occupation which have been destroyed by fire in consequence of burning the buildings of the navy-yard in the city of Washington;" and that by "An act for the relief of John Crosby and John Crosby, jr., approved April 26, 1816" (6 Statutes at Large, pages 167 and 168), "the proper accounting officers of the Navy Department were directed to settle the claim of John Crosby and John Crosby, jr., on account of the destruction by fire of their storehouse, goods, and wharf in the town of Hampden, in the State of Massachusetts, and to allow them in settlement thereof the value of said property destroyed as aforesaid."

Your committee further find that the following acts were passed by Congress in 1832, to wit:

AN ACT for the relief of the heirs and legal representatives of Edward Barry, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be paid to the heirs and legal representatives of Edward Barry, late a sailing master in the Navy of the United States, out of any money in the Treasury, not otherwise appropriated, the sum of five hundred and sixty-eight

6 OFFICERS AND CREW OF U. S. REVENUE CUTTER GALLATIN.

dollars and thirty-five cents, in full compensation for the property of the said Edward Barry, destroyed in the conflagration of the navy-yard at Washington, in the year one thousand eight hundred and fourteen.

Approved July 14, 1832.

(Volume 6, Statutes at Large, private bills, page 520.)

AN ACT for the relief of the *officers* and *soldiers* of Fort Delaware.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Second Auditor of the Treasury be, and he is hereby, authorized and required to ascertain the amount of property lost by each officer and soldier in the conflagration which occurred at Fort Delaware, on the night of the eighth of February, one thousand eight hundred and thirty one; and the amount so ascertained shall be paid out of any moneys in the Treasury not otherwise appropriated.

Approved July 14, 1832.

(Volume 6, United States Statutes at Large, private laws, page 512.)

And by "An act for the relief of the heirs and legal representatives of John Rose, sr., deceased, approved June 30, 1834" (6 Statutes at Large, page 594), a sum not to exceed \$2,500 was appropriated, to be paid for "the actual value of the property of John Rose, sr., late in the employ of the United States, as a machinist, at the navy-yard at Washington, but now deceased, which was destroyed by fire by the burning of said navy-yard in the year 1814." And that by

AN ACT for the relief of the United States troops who were sufferers by the recent disaster to the steamship San Francisco.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That there shall be paid, under the direction of the President, to each of the officers, non-commissioned officers, musicians, and privates, who, on the twenty-first day of December, eighteen hundred and fifty-three, embarked at New York, under orders for California, on the steamship San Francisco, and who was on board that vessel on the occasion of her recent disaster at sea, and to Lieutenant Francis Key Murray, and other officer or seaman of the United States Navy who was on board the said steamship, under orders, a sum equal in amount to his pay and allowances for eight months.

SEC. 2. *And be it further enacted*, That if any such officer, non-commissioned officer, musician, or private shall have died before receiving such payment from any cause consequent upon said disaster, his widow, if one survives him, and if not, then his minor children, if any there be, shall be paid a sum equal in amount to six months' pay and allowances of the deceased. And that the widows and minor children of those officers, non-commissioned officers, and privates who perished by this disaster, or who died from disease in consequence thereof, shall be allowed pensions in the same manner in all respects as if the said officers, non-commissioned officers, and privates had been killed in battle (10 Stat., 269).

Approved March 27, 1854.

AN ACT for the relief of certain officers of the Third United States Artillery, who suffered by fire at Fort Hamilton, New York Harbor, on the third of March, eighteen hundred and seventy-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of Treasury of the United States be, and are hereby, authorized to settle with the first lieutenants of the Third United States Artillery who lost their personal effects by fire at Fort Hamilton, New York Harbor, on the third of March, eighteen hundred and seventy-five, at a sum not to exceed six hundred dollars each, and a sufficient sum is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Approved January 30, 1877.

AN ACT for the relief of the sufferers by the wreck of the United States steamer Huron, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to reimburse the survivors of the officers and crew of the United States steamer Huron, wrecked off the coast of North Carolina on the morn-

ing of the twenty-fourth of November, eighteen hundred and seventy-seven, for the losses incurred by them respectively in said wreck, there shall be paid, out of any money in the Treasury of the United States not otherwise appropriated, the following sums, to wit:

To William P. Conway, master, one thousand dollars.

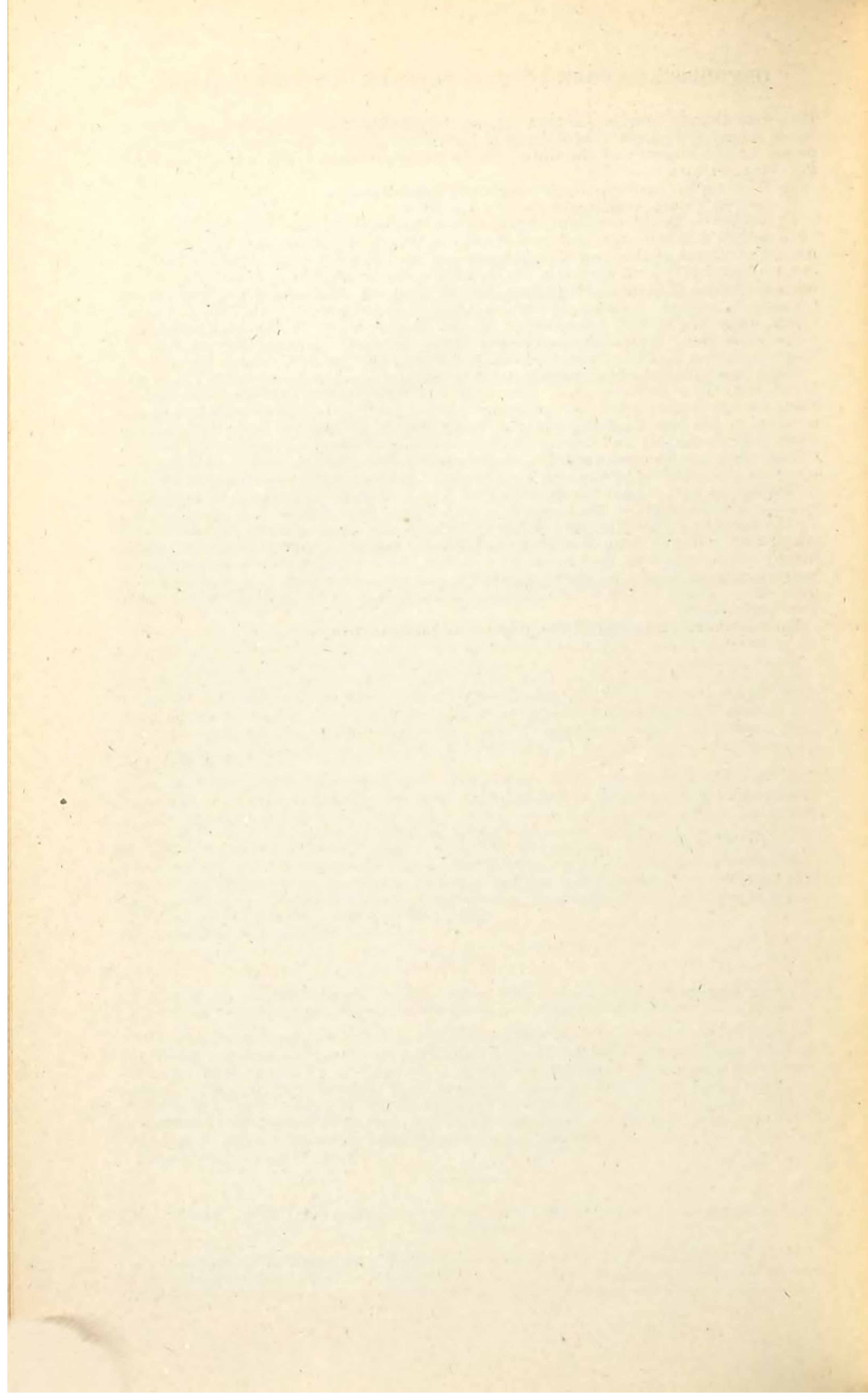
To Lucien Young, ensign, one thousand dollars.

To Robert G. Denig, assistant engineer, one thousand dollars.

To Edgar T. Warburton, cadet-engineer, one thousand dollars; and the following-named survivors of the crew of said vessel, to wit: Patrick Kane, Michael Trainor, Joseph Murphy, William McHugh, Michael Kennedy, Frank Watts, Peter Duffy, Frederick Hoffman, William L. Houseman, Robert Sampson, Michael Durkin, Dominique O'Donnell, August Lindgrist, Daniel Devoy, J. J. Robertson, Dennis Deasy, Samuel Clark, John E. Holland, John Collins, W. W. Brooks, Harry W. Avery, Daniel Borgan, Frank May, Harry Nelson, Thomas Price, Antoine Williams, Joseph Haynes, Thomas Carley, E. P. Trainer, Edward Aaronburg, one hundred dollars each.

With this long list of precedents, your committee does not feel willing to make Lieutenant Gross an exception. Your committee holds that no allowance should be made for any property not necessary and proper for Lieutenant Gross while in the service, in the line of duty; and not being able to determine from the evidence what articles claimed and destroyed were useful, necessary, and proper for such an officer whilst in the public service, or the exact value thereof, your committee recommend a substitute, by striking out all after the enacting clause and inserting the following, to wit: "That the Secretary of War is hereby authorized and required to ascertain the value of the property lost by First Lieut. Frank P. Gross, U. S. A., by the burning of his quarters at Fort Clark, Texas, on or about the 19th day of April, 1869, without fault or neglect on his part, and the amount so ascertained is hereby appropriated for that purpose: *Provided*, That no allowance be made for any property except what was useful, necessary, and proper for such an officer whilst in quarters, engaged in the public service, or exceeding in amount the sum of two thousand dollars."

Your committee recommend the passage of said substitute.



W. J. SMITH AND D. M. WISDOM.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1934.]

The Committee on Claims, having had under consideration the bill (H. R. 1934) for the relief of W. J. Smith and D. M. Wisdom, report the same back to the House with the recommendation that the bill do pass.

It appears that one R. M. Thompson was on the 1st day of May, 1885, indicted in the district court of the United States for the western district of Tennessee for a violation of the pension laws. On the same day he was arrested, tried, and convicted. In connection with the record of the verdict the court ordered, on motion, "that the case be continued to the next term of the court for judgment and sentence."

On the making this order Thompson entered into a bond in the sum of \$3,000, conditioned for his appearance at the next term "to receive the judgment and sentence of the court." The said Thompson did not appear, but absconded. The case was continued from term to term, and in the meantime his bondsmen, the said W. J. Smith and D. M. Wisdom, were diligent in their efforts to discover said Thompson and bring him before the court for sentence. They discovered him some time in May, 1888, in the city of Washington and caused his arrest. The said Thompson then sued out a writ of habeas corpus before the Hon. M. V. Montgomery, one of the judges of the District of Columbia. At the hearing of the writ the judge discharged said Thompson on the ground that a failure of the Tennessee court to sentence him at the term of the court at which he was convicted lost jurisdiction of the case, and that the bond to appear for judgment and sentence was invalid.

Since, the said Thompson has remained in the city of Washington with impunity. After the discharge of said Thompson the said Tennessee court entered judgment on his bond, and the marshal levied an execution on and sold the land of W. J. Smith, one of his sureties, to satisfy the judgment. At the sale the Government purchased the land and now claims it under said execution. The bill authorizes the Government, through its proper officer, to reconvey the land to said Smith.

MARIAM GOODLOE AND OTHERS.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PICKLER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 2103.]

The Committee on War Claims, to whom was referred the bill (H. R. 2103) for the relief of Mariam Goodloe and others, submit the following report:

This bill appropriates \$25,000 for the widow and other heirs of James Goodloe, late of Mound City, Ill., deceased, as compensation for the use and occupation of a building by the Government, and for damage to and destruction of an iron foundry, together with the material therein, while occupied by and under the control of the United States Government, said building and property being at the time the property of the said James Goodloe.

The facts in the case are substantially as follows: Prior and up to 1861, James Goodloe, the decedent, owned and operated an iron foundry in Mound City, Ill. In that year the building was taken by the Government and used until 1864 as a storehouse for shells and ammunition. In 1864 an explosion of some of the material stored therein occurred, which so damaged the building as to render it totally unfit for the purposes for which it had been used prior to its occupation by the Government. The decedent appears to have been always loyal to the Government. It also appears that no compensation was ever made to him or to his heirs for the occupation of or damage to the building by the Government, and the appropriation asked is a just and reasonable compensation therefor.

Your committee recommend that the bill do pass for such sum as evidence shows building worth or to extent damaged.

SALE OF NAVY-YARD LANDS, BROOKLYN.

MAY 25, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. GEISSENHAINER, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 8760.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 8760) "to provide for the sale of navy-yard lands in the city of Brooklyn," having given the same careful consideration, report as follows:

The bill has for its object the sale to the city of Brooklyn of a certain plat of land of about 26 acres, embraced within the limits of the navy-yard.

The said lands have never been used by the Government, nor have they ever been embraced in any scheme of improvement.

The said lands have been visited and carefully inspected by your committee, and have been found to consist of waste lands filled in and raised to the established grade, and to have been held for the storage of lumber, but your committee believe that, wooden vessels having been abandoned by the Navy, these lands can never be required for such purpose, and in this opinion they are sustained by the testimony of the officials of the navy yard, and very forcibly supported by the opinion of the Secretary of the Navy, from whose written opinion, upon this same subject, your committee have the honor to quote as follows:

In reply I have the honor to state that it is believed that the plat of land will never be needed for the purposes of the navy yard, and I therefore recommend the sale of said land.

The area of the yard, after this plat is disposed of, will be about 150 acres, and the Government retains the entire water front, with sufficient depth of land for any possible necessity.

By the third section of the bill the purchase price is fixed at not less than \$41,000 per acre, with the further provision that the question of excess of value, if any, over and above said sum, shall be determined by a board of three competent appraisers, to be appointed by the Secretary of the Navy, and that the report of such appraisers shall be subject to the approval of the Secretary of the Navy, thus thoroughly guarding the valuation of said land.

By the second section of said bill the sale is to be made upon the expressed condition that the city of Brooklyn shall, within two years after the conveyance of said land to the city of Brooklyn, open one water channel for commerce upon the said plat so to be conveyed from the Wallabout channel at least one-half the distance to or toward Flushing avenue, with only an open street intervening between said

water channel and the navy-yard line, and that the United States shall have free access from said navy-yard across said street to said channel. It is proposed to make said channel over 1,700 feet long and 150 feet in width, thus, in the opinion of your committee, very greatly facilitating the handling of the requirements of the said navy-yard.

By the same said section it is also provided that before said sale is consummated the consent of the city of Brooklyn shall be given to the closing by the United States of the Wallabout channel by a causeway, which shall be located entirely west of the land to be conveyed under this act to the city of Brooklyn.

At the present time the discharge from the two large sewers of the city of Brooklyn finds its way into the channel between the Cob dock and the main shore, which, being met by the tide coming up the channel, forms a very serious deposit.

Last year the cost of excavation was \$22,000, and the estimate for this year to keep the entrance to the dock free is placed at over \$40,000.

The building of a solid causeway across the channel will prevent the sewerage being drawn in and a consequent deposit.

Your committee believe that the establishment of a well built market with its appurtenances on this land will not only be a benefit to the city of Brooklyn, but will add greatly to the value and sanitary condition of the adjoining property. Your committee also believe that a portion of the money received from the sale of said land could be most advantageously employed in the repairing of the navy-yard buildings, many of which are in a most dilapidated condition.

Your committee report back the bill with the following amendments and recommend its passage:

In section 2, line 3, strike out the words "or so much thereof as may be required."

In section 2, line 7, strike out the word "should," and on the same line strike out the words "at any time," and on same line after the word "Brooklyn" insert the word "shall."

In section 2 strike out the lines 8 and 9 and substitute as follows: "from the Wallabout channel one or more water channels for commerce through the land conveyed, and the channel or channels hereby required to be opened shall be opened from the water."

In section 2, line 12, after the word "line" insert "one of said channels shall be opened at least one-half the distance from the Wallabout channel to Flushing, or within two years after the conveyance of said land to the city of Brooklyn."

In section 3, lines 2 and 3, strike out the words "or any part thereof."

In section 4, after the word "described," strike out the remainder of line.

In section 4, strike out lines 6, 7, 8, and 9.

In section 4, line 10, strike out the words "market purposes."

In section 4, in lines 13 and 14, strike out the words "or so much thereof as may be required."

In section 5, line 4, strike out the words "any portion or portions of."

COMMODORE OSCAR C. BADGER.

MAY 25, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MCALEER, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 6631.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 6631) for the relief of Commodore Oscar C. Badger, U. S. Navy, have considered the same and beg leave to report as follows:

Commodore Badger was the senior officer of his grade in the Navy, and next for promotion at the date of his retirement, August 12, 1885, and would have been promoted to the grade of rear-admiral in less than two months thereafter, October 5, 1885, had he not been debarred by section 1444 of the Revised Statutes. His junior in rank succeeded to the vacancy. It further appears that Commodore Badger is the only officer of his class and date who failed, because of the age limit, to reach the grade of rear-admiral. (See Registers, U. S. N., 1885 and 1891.)

This result is primarily due to the fact that the "act to define the number and regulate the appointment of officers in the Navy, and for other purposes, approved July 25, 1866," was rendered ineffective in his case by special legislation in behalf of other officers of the Navy, over whom Commodore Badger had been advanced under the provisions of the act aforesaid.

For six years the Official Register of the Navy, as readjusted under this general law, remained undisturbed, and Commodore Badger held the relative position on said register, to which he was advanced by selection upon the recommendation of the "Farragut board," and but for the special legislation referred to he would long since have been a rear-admiral.

It was this interference with the operation of the general law that deprived him of the rank to which he was partly entitled, and which he would otherwise have attained.

Commodore Badger's contention is that he has a rightful claim to the precedence awarded him under the act of July, 1866, upon the recommendation of the "Farragut board;" that Congress having authorized his promotion by this act as one of the officers of the Navy "who had rendered the most efficient and faithful service during the war, and who possessed the highest professional qualifications and attainments," he ought not to have been deprived of the consequential benefit of said promotion by any special legislation; that having thus acted to his prejudice, Congress should make reparation, as far as practicable, by authorizing his promotion to rear-admiral on the retired list, as of the date of his retirement as commodore, which can be done without prejudice to any other officer, either upon the active or retired list.

The committee believe this contention is founded in right and justice.

The case of Commodore Badger is exceptional in several respects. He is not only the only officer of his class and date reaching the grade of commodore who failed (by reason of the age limit) to attain the next higher grade, but he is also the only one who was prevented from reaching the higher grade by special legislation at variance with the intent of the general law of July, 1866.

The committee does not think that favorable action in this case, as recommended in the bill as amended by the committee, would establish a precedent against public policy, because of its exceptional circumstances, and such as can not arise in the case of another officer of the Navy.

In view of the foregoing facts, and others more fully set forth in the record of the case, the correctness of which is attested by the Navy Department; in view of the highly honorable and meritorious services of Commodore Badger, covering a period in peace and war of forty-four years upon the active list of the Navy; in view of his promotion for faithful and efficient service in the war and the circumstances attending his retirement, the committee regard the case as exceptional and Commodore Badger entitled to the promotion provided for in the bill.

It may not be out of place in this report to refer specially to the fact that Commodore Badger was severely wounded in a night attack upon Forts Moultrie and Sumpter, September 2, 1863, and that he has been a constant sufferer from that date, and has been subjected to large expense for special medical attendance; and also to the fact that as ranking officer in command of the *Constitution* and two other vessels at the port of Havre, during the late Paris Exposition, he was put to large expense as the representative of the United States Navy in properly entertaining guests aboard his ship, all of which was borne out of his own salary.

The committee asks attention to the following letter of the Secretary of the Navy to the memorial of flag officers of the Navy to the letter of Rear-Admiral Fairfax in favor of the action asked of Congress in behalf of Commodore Badger:

NAVY DEPARTMENT,
Washington, April 26, 1892.

SIR: Referring to your communication in which you state that the Committee on Naval Affairs of the House of Representatives has assigned to you, as chairman of its subcommittee on "organization, rank, and pay," H. R. bill No. 6631, "for the relief of Commodore Oscar C. Badger, United States Navy," and inclosing a copy of said bill with a request for the opinion of this Department upon its merits, and referring also to your subsequent communication transmitting the papers filed with the committee to accompany the bill, I have the honor to transmit herewith, for your information, an official statement of the service of Commodore Badger from the date of his appointment as a midshipman in the Navy, September 9, 1841, to the date of his retirement with the rank of commodore, August 12, 1885, a period of nearly forty-four years.

It appears from the records of the Department, as shown by the statement above-mentioned, that Commodore Badger, during the long period of his service in the Navy, has been repeatedly assigned to difficult and responsible duties, both in time of war and peace, which duties he has uniformly discharged in such a manner as to win the high approbation of his superior officers and of the Department. As a midshipman on board the *Saratoga*, in 1843, he was attached to a landing party from that ship and took part in the attack upon and destruction of the Bereby villages, on the west coast of Africa. He served on board the *Mississippi* with the Gulf Squadron during the Mexican war, and participated in the attack upon Alvarado in 1846. Subsequently, in 1855, he commanded a party from the *John Adams* which attacked and destroyed the town of Vutia, Fiji Islands.

Commodore Badger's services during the late war were particularly meritorious. While in command of the steamer *Anacostia*, in the winter and spring of 1862, he was

engaged in a number of attacks on the Potomac River and Aquia Creek batteries, in the bombardment of Yorktown, Va., and defenses at Gloucester Point, and subsequently, in 1863, in the attack on the batteries and forts on Morris Island, South Carolina. He commanded the ironclads *Patapsco* and *Montauk* in attacks on Forts Wagner, Gregg, and Sumter. While performing the duties of fleet captain on board the ironclad *Weehawken* in a night engagement with Forts Moultrie and Sumter Commodore Badger was severely wounded, his right leg being shattered by a metallic splinter, driven by a round shot which struck the turret of the vessel.

The efficient and faithful services rendered by Commodore Badger, and the sterling qualities displayed by him in the discharge of the important duties to which he was assigned during the late war, were recognized in an official report made to the Department by Admiral Dahlgren, under date of September 2, 1863, and by the Department in a communication addressed to Commodore Badger, under date of January 7, 1864. Copies of the report of Admiral Dahlgren and of the Department's letter to Commodore Badger, above referred to, which appear in the brief filed with the committee, and herewith returned, have been verified by comparison with the records of the Department, and are found to be correct.

It further appears, from the records of the Department, that in pursuance of the requirements of section 1444 of the Revised Statutes, Commodore Badger was on the 12th of August, 1885, retired from active service; that at the date of his retirement he was the senior officer in his grade in the Navy; and that he would have been promoted to the grade of rear-admiral October 5, 1885, but for his retirement under the provisions of the section above mentioned, less than two months previous to that date.

With reference to the circumstances attending the retirement of Commodore Badger the following statement is made in a memorial dated February 11, 1891, and signed by flag-officers of the Navy, a copy of which memorial accompanies the papers above mentioned.

"Circumstances connected with his retirement entitle him to more than ordinary consideration and sympathy. Shortly before his retirement the number of rear-admirals on the active list was reduced by law so that at 62 years of age the statutory period for retiring, there was no place for him. In less than two months a vacancy occurred that would have permitted his promotion had he still been on the active list. He is the only one of his class and date, reaching the grade of commodore, who did not attain the next higher step."*

Under the circumstances above stated, and in view of the fact that Commodore Badger would have attained the grade of rear-admiral within two months from the date of his retirement, and in consideration of his advanced age, he being now in his seventieth year, the case of Commodore Badger appears to be an exceptional one, and the Department is of opinion that the bill in question providing for his appointment as a rear-admiral on the retired list of the Navy merits the favorable consideration of Congress.

In returning herewith the papers which accompanied your letters above referred to I deem it proper to state that the "statement of the service of Commodore Oscar C. Badger in the U. S. Navy upon the active list from 1841 to 1885," which was filed with the committee, has been carefully verified by comparison with the records of the Department and is found to be correct.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Hon. WILLIAM MCALEER,
*Chairman Subcommittee on Organization, Rank and Pay,
Committee on Naval Affairs, House of Representatives.*

WASHINGTON, D. C., February 11, 1891.

The undersigned, officers of flag rank in the United States Navy, would be much gratified to see Commodore Oscar C. Badger, U. S. Navy, on the retired list, promoted to the grade of rear-admiral. His record during his long career in the Navy, both in war and peace, is such as to entitle him to the highest consideration of Congress and the executive authorities. Circumstances connected with his retirement entitle him to more than ordinary consideration and sympathy. Shortly before his retirement the number of rear-admirals on the active list was reduced by law so that at 62 years of age, the statutory period for retiring, there was no place for him. In less than two months a vacancy occurred that would have permitted his promotion had he still been on the active list. He is the only one of his class and date, reaching the grade of commodore, who did not attain the next higher step.*

* With the exception of one commodore, retired at his own request.

The commodore is now in the sixty-ninth year of his age, and in the course of nature will not long be a possible recipient of a Government favor.

JOHN L. WORDEN, Rear-Admiral, U. S. Navy.

C. R. P. RODGERS, Rear-Admiral, U. S. Navy.

W. W. QUEEN, Rear-Admiral, U. S. Navy.

PEIRCE CROSBY, Rear-Admiral, U. S. Navy.

WM. G. TEMPLE, Rear-Admiral, U. S. Navy.

S. R. FRANKLIN, Rear-Admiral, U. S. Navy.

JAMES A. GREER, Commodore, late commander of European station.

T. H. STEVENS, Rear-Admiral, U. S. Navy.

JNO. H. UPSHUR, Rear-Admiral, U. S. Navy.

J. C. HOWELL, Rear-Admiral, U. S. Navy.

A. BRYSON, Rear-Admiral, U. S. Navy.

THOMAS S. PHELPS, Rear-Admiral, U. S. Navy.

A. K. HUGHES, Rear-Admiral, U. S. Navy.

EDMUND R. COLHOUN, Rear-Admiral, U. S. Navy.

JOHN J. ALMY, Rear-Admiral, U. S. Navy.

R. W. SHUFELDT, Rear-Admiral, U. S. Navy.

JNO. H. RUSSELL, Rear-Admiral, U. S. Navy.

S. P. CARTER, Rear-Admiral, U. S. Navy.

S. B. LUCE, Rear-Admiral, U. S. Navy.

WASHINGTON, D. C., *February 11, 1892.*

DEAR SIR: Maj. Robert W. Hunter has already laid before your committee Commodore Oscar C. Badger's papers asking Congress to promote him to the grade of rear-admiral on the retired list. The appeal made by the rear-admirals residing in Washington is a strong one, and needs little more to satisfy your committee as to its reasonableness; yet my long acquaintance with the commodore, both in times of war as well as in the peaceful rounds of professional duty, has given me the opportunity to judge of the justice of "the Farragut board," that advanced him over officers that had previously been his seniors, he being commissioned commander July 25, 1866, "for gallant conduct in battle." Had he continued to hold his number on the Navy Register thus conferred, he would have retired as rear-admiral. The commodore is known for his unassuming and unselfish life, and has allowed these years since his retirement to pass without any effort of his own to gain that which he naturally would covet; and this present movement has emanated from his brother officers rather than from himself.

It is proper to mention that the wound he received off Charleston has ever since caused suffering and great inconvenience, besides very considerable expense for medical treatment, and at this time he is incapacitated from taking active part in this appeal to Congress, his relative, Maj. Hunter, kindly undertaking the onerous part to relieve him mentally.

Very respectfully,

D. MCNEILL FAIRFAX,
Rear-Admiral, U. S. N.

Hon. JOHN R. MCPHERSON,
United States Senate.

NAVY DEPARTMENT,
Washington, January 7, 1864.

SIR: Your letter of the 4th instant, with inclosure, reporting your return, is received.

You are hereby detached from the South Atlantic blockading squadron and will regard yourself as waiting orders.

The Department regrets the loss of your valuable services and trusts that you may speedily recover from the injuries received in conflict with the enemy.

Very respectfully,

GIDEON WELLES,
Secretary of the Navy.

Lieut. Commander O. C. BADGER, U. S. N.,
Baltimore, Md.

* One commodore of this date retired on his own application.

NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY.

MAY 24, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SMITH, of Illinois, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 4054.]

The Committee on Claims, to whom was referred the bill (H. R. 4054) entitled "A bill for the relief of the New York, Lake Erie and Western Railroad Company," have had the same under consideration and report as follows:

This claim is based upon alleged contracts by and between the United States of America, acting in that behalf by their Postmaster-General, and the president of the Erie Railway Company, for the transportation of mail matter upon the routes mentioned in the bill upon which this report is made.

It involves controverted questions of law and fact which may, in justice to the Department and this company, be submitted to judicial investigation and determination.

These questions are so well stated in a recent communication from the Postmaster-General to Senator McPherson, that your committee hereto append it, and recommend the passage of the bill.

POST-OFFICE DEPARTMENT,
Washington, D. C., December 8, 1888.

SENATOR: I have the honor to acknowledge receipt of your communication of the 6th instant, inclosing a copy of Senate bill No. 779 as amended, "for the relief of the New York, Lake Erie and Western Railroad Company," with accompanying report of the Senate Committee on Post-Offices and Post-Roads.

The bill, as amended, merely authorizes the Court of Claims to take jurisdiction of the claim, notwithstanding its bar by the statute of limitations. I have carefully examined all the papers bearing on this matter on the files of the Department and the rulings of the officials of this Department bearing upon the claim.

The claim, as presented here, was based upon alleged contracts between the United States and the said company, alleged to have been signed and acknowledged by John A. J. Creswell, Postmaster-General, and by the company on January 10, 1874, and on April 20, 1874, respectively. The decision of the Department was that there were no such contracts, and this necessarily disposed of every other question on the merits, or on the law, within the jurisdiction of the Department. This conclusion was reached, as I understand it, not on the ground that the contracts were not executed as a matter of fact, but that as a matter of law they could not be considered contracts, because the following provisions of statute law were not complied with:

"R. S., SEC. 402. Every order, entry, or memorandum whatever, on which any action is to be based, allowance made, or money paid, and every contract, paper, or obligation made by or with the Post-Office Department, shall have its true date

2 NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY.

affixed to it; and every paper relating to contracts or allowances filed in the Department shall have the date when it was filed indorsed upon it."

"R. S., SEC. 404. The Postmaster-General shall deliver to the Sixth Auditor, within sixty days after the making of any contract for carrying the mail, a duplicate thereof."

I am inclined to think that a violation of all or any one of these provisions by officials of the Department could not affect the validity or binding force upon the Government of any contract otherwise duly executed, and that these provisions are mere specifications of duties to be performed by the Government's own officers, upon the compliance or noncompliance with which no third party's rights could hang.

It would seem absurd that anyone negotiating with the Government and obtaining a contract should not only be obliged to see to it that it was executed according to law by both parties, but that it should also be incumbent upon him to follow up the Postmaster-General and the clerks of the Department until the technical and clerical duties of filing, of entries in the proper books, and of furnishing copies to the proper officials were fully complete and ended. At all events, I think this claimant should have an opportunity to present the question to the Court of Claims, to establish, if it can, that binding contracts *were* made, that it performed the service, and that it did not receive compensation. On none of these questions do I assume to express an opinion.

In order that the whole question as to the execution and validity of the contracts may be passed upon, I suggest that the inclosed amended bill be further amended by the insertion of the word "alleged" before "contracts," as otherwise it may be claimed that the legislation intended to foreclose that question.

I hand you herewith a copy of the opinion of the Assistant Attorney-General of this Department on the same subject.

I have the honor to be, your obedient servant,

DON M. DICKINSON,
Postmaster-General.

Senator MCPHERSON,
United States Senate.

O

PROTECTION OF SETTLEMENT RIGHTS.

MAY 25, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. McRAE, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany H. R. 7028.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 7028) to protect settlement rights where two or more persons settle upon the same subdivision of agricultural public lands before survey thereof, report the same with an amendment and recommend that it pass.

Amend by inserting after the word "joint," in the ninth line, the word "cash."

The necessity for such legislation is shown by the following letter from the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., April 11, 1892.

SIR: I have had the honor to receive, by reference from your Department under date of March 11, 1892, for report in duplicate and return of paper, House bill No. 7028, "to protect settlement rights where two or more persons settle upon the same subdivision of agricultural public lands before survey thereof."

In reply I have to report that section 2274, U. S. Revised Statutes, having been repealed by section 4, act March 3, 1891, it is necessary that provision should be made for the adjustment of conflicting claims of homestead settlers upon unsurveyed agricultural public lands of the United States. The pending bill makes such provision, but in my opinion the form of the "joint entry" should be more clearly defined.

In case it is intended to allow a joint homestead entry the homestead law should be modified to provide for such an innovation, and a method should be provided for perfecting the entry, otherwise perplexing complications would arise. For instance, suppose A, B, and C settle upon unsurveyed land under the homestead law, and when the land is surveyed they find that their claims conflict as to a 40-acre subdivision. They each make a homestead entry to embrace such portions of their respective claims as are not in conflict and make a joint homestead entry of the 40 acres involved in the conflict. A perfects his entry by making proof and payment under section 2301, United States Revised Statutes, as amended by the act of March 3, 1891, and desires to perfect the joint entry in the same manner, but B and C refuse to do so. B lives on his entry for five years, submits proof, and perfects the same. He then desires to perfect the joint homestead entry by proving five years' occupation, etc., but C refuses to do so, as he is not compelled under the law to perfect his entry for two years after the expiration of five years from date thereof.

Just prior to the expiration of seven years from the date of his entry, C submits final proof thereon, and perfects the same. He then desires to perfect the joint homestead entry, but A, having perfected his entry five years previously, has sold out and moved away, and C, after perfecting his entry, died intestate, leaving no heirs. A, if present, could not show compliance with the requirements of the statute as to cultivation, etc., for five years. B left no one surviving him entitled under the law to succeed to his interest. In such a case how could the entry be perfected? If C were allowed to perfect the entry, would he not reap the benefit of the improvements made by A and B, thus defeating the object of the law?

The case stated is not an improbable one, or less perplexing than others that might arise.

All difficulties would be obviated by requiring that such settlers be allowed to unite in a joint *cash* entry, embracing the land involved in the conflict.

I would, therefore, suggest that the word "cash" be inserted after the word "joint," in the ninth line of the bill, making the sentence read "It shall be lawful for such settlers to make joint cash entry of their lands at the local land office."

Very respectfully,

T. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

O

WILLIAM H. TURLEY.

MAY 25, 1892.—Laid on the table and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

ADVERSE REPORT:

[To accompany H. R. 3547.]

The Committee on War Claims, to whom was referred the bill (H. R. 3547) for the relief of William H. Turley, submit the following report:

The facts out of which this bill for relief arises will be found stated in House report of the Committee on War Claims of the Forty-seventh Congress, a copy of which is hereto appended and made a part of this report.

Your committee concur in the conclusions stated in that report, and report adversely and recommend the bill do lie upon the table.

[House Report No. 1825, Forty-seventh Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 1578) for the relief of William H. Turley, report as follows:

This is a claim for about \$9,000, based upon the following state of facts substantially:

A libel was filed in behalf of the United States against the steamer *T. D. Hine*, her tackle, etc., in the circuit court of the United States in the district of Louisiana, April 3, 1865, for the confiscation of the property under acts of Congress. The property was rightfully seized in said suit by the marshal and by the court ordered to be sold, and was sold by the United States marshal in due process of law, and the proceeds of the sale paid into court, which said proceeds the clerk of the court deposited in the First National Bank of New Orleans, under a rule of the court making that a bank of deposit.

The case, after an adverse decision, was carried to the United States Supreme Court on an appeal by Mr. Turley, and the decree reversed, and the property seized ordered to be restored by the United States Supreme Court on motion of the Attorney-General. (See case reported in 7th Wallace, page 454.)

Meanwhile the bank had failed and its effects gone into the hands of a receiver, and it paid, ultimately, through the receiver, 75 per cent of the claim, which the owner received. He asks Congress to allow and provide for the payment of the balance of the amount of his alleged loss, to wit, \$9,000 and interest.

There is no evidence that the said bank was not in good condition and a proper bank of deposit at the time when the deposit therein was made, or that there was any negligence or fault on the part of the clerk in depositing and keeping the money there as was done. Neither does it appear that there was no probable cause to justify the bringing of the libel, or that there was any wanton conduct on the part of the officers of the Government in bringing or prosecuting the same.

Mr. Turley first gave a bond according to law, and the property was released to him, but it was afterwards given up by the sureties, and the marshal again took possession and held the same as before, no new bond being given or other release obtained.

The property was in the custody of the law, and was rightfully sold, in accordance with regular orders of the court, and the usual proceedings in such cases. The loss was one of those fortuitous events which were incident to such legal proceedings; that the money proceeds were in no sense in the custody or within the control of the Government or its agents while held in the custody of the law, and the loss is in no way to be attributed to any fault of theirs. It happened through the fault of no one, not even of the officers of the law, as there is no proof of any want of due care and reasonable diligence in the premises. There seems to be no principle of law which creates any legal liability against the Government.

The committee report adversely to the claim, and recommend that the bill lie upon the table.

O

HEIRS OF JAMES TAYLOR.

MAY 25, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 4296.]

The Committee on War Claims, to whom was referred the bill (H. R. 4296) for the relief of the heirs of James Taylor, deceased, report as follows:

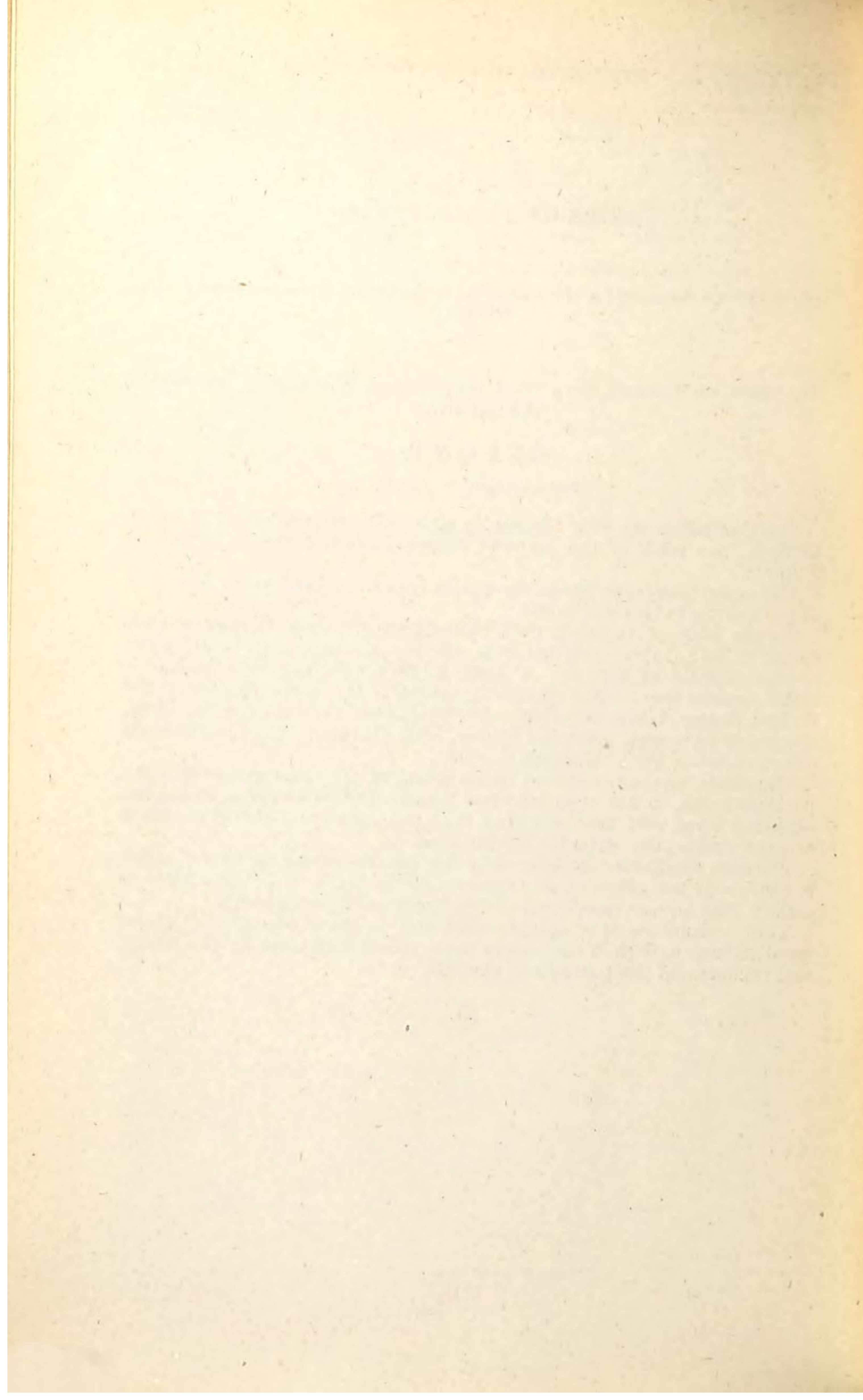
The committee have given the case a careful consideration, and find the following to be its history:

On the 25th of October, 1867, the claimant, James Taylor, of Cass County, Mo., filed his petition with the Quartermaster-General, under the provisions of the act of July 4, 1864, alleging that he had a claim against the United States for property taken for the use of the United States Army, as follows: 900 bushels of corn at 25 cents, \$225, alleged to have been taken in October, 1862, by Lieut. Bixby, regimental quartermaster, Fifth Missouri Cavalry.

The claim was investigated by an agent of the Quartermaster's Department who, in his report to the Quartermaster-General, found the claimant loyal, and recommended that the claim be rejected for want of prosecution, the claimant having died.

The case was finally considered by the Quartermaster-General August 9, 1887, and not allowed, the Quartermaster-General being unable to certify that he was convinced of the loyalty of the claimant.

Your committee is of opinion that the claimant was at all times a loyal citizen, and that the stores were taken and used by the Army, and recommend the passage of the bill.



WILLIAM H. H. BROOKS.

MAY 25, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. WINN, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 3237.]

The Committee on War Claims, to whom was referred the bill (H. R. 3237) for the relief of William H. H. Brooks, submit the following report:

This claim was presented to the Fifty-first Congress and favorably reported upon by the Committee on War Claims, to whom it was referred.

After an investigation of the facts involved, the report of that committee, a copy thereof being hereto appended, is adopted and made a part of this report.

Your committee recommend that the bill do pass.

[House Report No. 2706, Fifty-first Congress, first session.]

The Committee on War Claims, to whom was referred a bill (H. R. 3793) in relation to the claim of William H. H. Brooks against the United States, have given the same careful consideration and report:

That William H. H. Brooks, deceased, late of New Orleans and State of Louisiana, in the year 1865, during the months of June and July, had become the owner of five hundred and seventy-seven bales of cotton, which he purchased partly in Mexico and partly in the State of Texas.

These purchases were made with the knowledge and consent of Gen. E. B. Brown, then commanding the United States troops in the western part of Texas, with headquarters at Brownsville, and the cotton was intended to be shipped to New Orleans and thence to New York City to a market, and the operations of Mr. Brooks were carried on in accordance with instructions before that time given by Gen. Sheridan to Gen. Brown; but before the shipments could be made Maj. Gen. F. B. Steele ordered Gen. Brown to seize all the cotton and ship it to the United States Treasury agents at New Orleans. Mr. Brooks protested against this seizure because it would do him great pecuniary wrong and as being in violation of the orders in force at the time he made his purchases, but Gen. Brown answered that he had no discretion in the matter and advised Mr. Brooks to send his papers relating to the purchases, etc., to his correspondents in New Orleans, who could present them to Benjamin F. Flanders, United States supervising special agent of the Treasury Department at New Orleans, when, he had no doubt, the cotton could be released. Mr. Brooks had submitted all his bills of sales and weights of the said cotton to Gen. E. B. Brown.

There was no attempt whatever at concealment or evasion. That portion of the cotton which had been bought by Mr. Brooks in Mexico was brought across into our territory preparatory to shipment to New Orleans.

Acting under the instructions of Gen. Brown, Mr. Brooks sent all his papers to Ping Brothers, his New Orleans merchants, but before they had time to act in the premises their house, with all their possessions, papers, etc., was seized and taken possession of by the United States military authorities, so that they were unable to make the demand for the release of Brooks's cotton, and on the 3d day of July,

1865, Supervising Special Agent Flanders sold 64 bales of said cotton; on the 9th day of July, 1865, he sold 41 bales, and on the 17th day of July, 1865, he sold 43 more bales of this cotton—making in all, 148 bales of this cotton which was sold by the said Flanders at New Orleans, and the proceeds of the sales thereof were paid into the United States Treasury as the proceeds of sales of captured and abandoned property. The remainder of said cotton, amounting to 429 bales, was, during the month of August, 1865, by said Flanders shipped and consigned to Simeon Draper, special agent of the United States Treasury Department at New York, and by him sold and the proceeds of said sales were paid into the United States Treasury as proceeds of sales of captured and abandoned property.

Ping Brothers were Spanish subjects, and they, through the Spanish consul at New Orleans, made a formal protest against the seizure and taking of their property and effects (among which were the aforesaid papers of Mr. Brooks), but such protest was entirely disregarded, so that it was impossible for Mr. Brooks to follow and reclaim and prove his property before it was sold and converted into money.

Although this cotton was seized and sold by United States officers and the proceeds paid in as proceeds of sales of captured and abandoned property, yet it did not come strictly within the provisions of the act of March 12, 1863, and the acts amendatory thereto, which had reference more particularly to the capture or taking of property found in a hostile country or community, for at the time of this seizure there was, in fact, no state of war, all armed forces in hostility to the United States in Texas having laid down their arms, and a part of the cotton was, in fact, taken *in transitu* from a foreign country.

The seizure was not made by the United States Treasury agents in the first place, but by the military authorities, although it was afterwards turned over by the military officers to the Treasury agents, who disposed of it in the same manner they would have done had the seizure been first made regularly by the Treasury agents.

The claim was presented to the Secretary of the Treasury under the fifth section of the act of May 18, 1872, but was rejected for want of jurisdiction, for the very obvious reason that the seizure was not made "by the agents of the Government unlawfully and in violation of their instructions," which is one of the provisions of the said section.

It will not be pretended that Mr. Brooks was not a loyal citizen, nor can it be asserted that he was engaged in any unlawful act or evasion of the law or regulations of the Treasury Department at the time he made the purchase of this cotton, during the time he had it in his possession, or at any time in connection therewith.

The seizure of this cotton deprived him of all his fortune and so impoverished him that he was not able during his lifetime to prosecute the claim any better than he has done. All his efforts in that direction were unsuccessful by reason mainly of his inability to give his time and attention to it. He died some months ago, and now Pauline J. Brooks, his widow and legal representative, is making an effort to obtain from the Government that reparation for wrongs done which her deceased husband had failed to obtain, and in order to enable her to do this she makes the very reasonable request that she be allowed to present her case to the Court of Claims for adjudication.

Your committee therefore report back the bill and recommend its passage, with the following amendments:

At the end of line 7 insert "alleged to have been," and in line 8 after the word "property" insert the word "and," and in line 7 strike out "seventy-five" and insert "seventy-seven."



HEIRS OF JAMES MURPHY, ETC.

MAY 25, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CLANCY, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 6319.]

The Committee on War Claims, to whom was referred the bill (H. R. 6319) for the relief of the heirs of James Murphy and William P. Buckmaster, submit the following report:

The firm of Murphy & Co., consisting of James Murphy, William J. Pease, and William P. Buckmaster, proprietors of the Fulton Iron Works, of New York, entered into contract, under date of August 15, 1862, with the Chief of the Bureau of Steam Engineering, Navy Department, "to build and erect, at their own expense and risk, in a secure and finished state, fit in every respect for sea service, in the United States steamer *Otsego*, at the city of New York, all the machinery necessary to the propulsion of the same by an overhang paddle wheel," for the sum of \$82,000; that the machinery for said vessel was accepted by the Navy Department and that the contract price therefor was paid.

The contractors for the machinery and hulls of the double-ender gunboats contracted for in the years 1862 and 1863, applied to Congress for an additional allowance over the contract price paid therefor by the Navy Department, and that a board of officers was appointed to examine their claims, under the following resolution, passed in the Senate March 9, 1865:

IN THE SENATE OF THE UNITED STATES,
March 9, 1865.

Resolved, That the Secretary of the Navy be requested to organize a board of not less than three competent persons, whose duty it shall be to inquire into and determine how much the vessels of war and steam machinery contracted for by the Department in the years 1862 and 1863 cost the contractors over and above the contract price, and the allowance for extra work, and report the same to the Senate at its next session, none but those who have given satisfaction to the Department to be considered.

Under said resolution the honorable Secretary of the Navy appointed a board, consisting of Commodore Thomas O. Selfridge, Chief Engineer Alexander Henderson, and Paymaster C. H. Eldridge, which convened at the Brooklyn Navy-yard June 5, 1865, and continued in session for more than six months.

Among the contractors who had been notified by the board organized under the resolution above cited, to appear before it for the purpose of testifying as to their claims to additional compensation for the work

performed, Mr. William P. Buckmaster, one of the firm of James Murphy & Co., presented himself before the board and testified, under oath, as follows:

The contract (for the machinery of the double-ender *Otsego*) was dated by the Navy Department August 15, 1862, in which [seven months] was allowed to complete the machinery and deliver to the Government; but it was not so delivered until June, 1864. That he was released by the Department from the terms of the contract regarding time of completion, as shown by the letter attached to the bill presented. That the total cost of the machinery was \$104,386.61, and the amount received from Government, the contract price, was \$82,000, leaving a balance, the excess of loss to them over and above the contract price, of \$22,386.61. That there are no bills for extra work, and that there are no charges in the bill annexed to this record, marked No. 36, for any condemned material, faulty workmanship, or re-bracing of boilers; and that the bill shows the actual cost of labor and material. That the excess of cost is due to the rise in the price of labor and material, and also when the contract was taken it was represented by Mr. Isherwood that he considered it a fair price, urging us to accept it, as it was difficult to get the work, and it might exempt our men from being drafted. He also stated that the weight of the machinery would not exceed that of the *Paul Jones* class, while it did exceed it by one-third; no drawings or plans being shown at the time the contract was made, we could only judge of the cost by comparing it with engines and boilers of the same size, cylinder, and stroke of piston that we had built for river boats, but found it was more than double.

Upon the conclusion of the examination of all the claims presented, the board made the following report:

The board, after a critical examination of the bill of cost presented by the several contractors for vessels and steam machinery contracted for in the years 1862 and 1863, who have appeared and made sworn statements, has determined the excess of cost in the several cases over and above the contract price and allowance for extra work to be as follows:

Wooden double-enders—Machinery.

Name of vessel.	Contractor.	Excess of cost determined by board.
* * * * * <i>Otsego</i> * * * * *	* Fulton Works.... *	* \$22,386 61 *

Subsequently, by authority of an act of Congress, approved March 2, 1867, another board of officers was appointed by the Department, "to investigate the claims of all contractors for building vessels of war and steam machinery for the same, under contracts made after the 1st day of May, 1861," and its report was communicated to Congress December 4, 1867. The claim of the Fulton Iron Works does not appear to have been presented to this board for examination.

The claimants were losers on this contract to an amount nearly, if not quite, equal to one-half of the whole contract, there can be but little doubt, as were most, if not all of the contractors engaged in the construction of the twenty-seven gunboats mentioned in the report of the Selfridge board. These contracts were entered into in abnormal times. War was raging, it is true, but many were the predictions then made, by some of our ablest statesman, that it could not and would not last more than a few months at most.

Those who, gifted with the greatest prescience, could not and did not predict as to the future with any degree of accuracy, and few there were, indeed, who, in August, 1862, the date when these contracts were entered into, could have been made to believe that nearly three years

from that date would find the war still raging with unabated fury, millions of men still in arms, and prices of all kinds of labor, materials, and provisions doubled or trebled in amount.

In discussing this very claim, and others of like character, Senator Sumner (see Cong. Globe, 1865, p. 1892) said:

The Senator from Kentucky said that they took the war into their calculations. Perhaps they did; but who among these contractors could take that war adequately into his calculations? Who among those sitting here or at the other end of the avenue properly appreciated the character of the great contest that was then going on? Sir, we had passed half a century in peace; we knew nothing of war or of war preparations, when all at once we were called to efforts on this gigantic scale. Are you astonished that these contractors did not know more about the war than your statesmen? Be to these contractors as gentle in judgment and as considerate as you have been to others in public life who have erred in their calculations with regard to it. (Cong. Globe, p. 1987.)

The building of that invulnerable Navy was one of the great victories of the war, not to be commemorated on any special field, but to be seen in those mighty results which we all now enjoy.

And now again I ask, are you ready to see these contractors who have done this service sacrificed? You do not allow the soldier to be sacrificed, nor the national creditor who has taken your stock; will you allow the mechanic to be sacrificed? * * * My friend on my right (Mr. Nye) asked you to be magnanimous to these contractors. I do not put it in that way. I ask you simply to be just. Do by them as you would be done by. The Senator from Nevada also very fitly reminded you of the experience of other countries. He told you that England, at the close of the Crimean war, when her mechanics had suffered precisely as your mechanics have suffered, did not allow them to be sacrificed, but every pound and shilling of their liabilities under their contracts was promptly met by that Government. Will you be less just to your mechanics than England? It is an old saying that "republics are ungrateful." I hope that this Republic may certainly vie with any monarchy in gratitude to those who served it. (Cong. Globe, p. 1987.)

During the same debate Senator Hendricks, of Indiana (see Congressional Globe, p. 1964, 1865), said:

I am of the opinion that these sums ought to be paid, as a matter of justice and right, by the Government to these contractors. Each case, of course, has its special merits or demerits. But, sir, I believe in the doctrine that where a man contracts to do a great and very important work for the Government, he ought not to be allowed to be a large loser, and, in some cases, as will be the result here, to be broken up by the contract that he may have made, and especially in the case of contracts made at such a time as these were made and for such work as they were made. * * * We had to have these ships; the Government could not progress in the war without them, and great numbers had to be manufactured or contracted for about the same time. What was the effect of that? The Government made a contract with one man, then with another, then with another, and started her own shipyards with all the force it was possible to command. What was the effect of that? Of course, to increase the price of labor; of course, to increase the price of material required in the construction of the ships. There are some general views about the equity of these claims without reference to the particular merit of each case. (Congressional Globe, p. 1890, 1866.)

The point is that, these contracts being made in 1862 and 1863, the prices continued to advance during all the time that these parties were building the vessels and constructing the machinery for them, so that they were overtaken by this enormously high rate of prices and destroyed. (Congressional Globe, p. 1892.)

These contracts were made by some below their own propositions, and at barely fair prices at the then current rates. Is there any Senator here who wishes to see these men broken up merely because they entered into a contract with the Government? Is there any Senator here who wishes to say to these men, We have your bond, and we will hold you to your bond; we will take the blood out of your business; we will have the pound of flesh? (Congressional Globe, p. 1964.)

Your committee also beg to call attention to the testimony of J. W. King, found in Mis. Doc. 201, Forty-second Congress, first session, pages 166, 167, dated April 6, 1872. Mr. King was a chief engineer in the Navy and a member of the Marchand board, and the reasons of the board for not paying these bills are clearly set forth in the following extract from Mr. King's testimony, which clearly shows that these

bills were never considered by the Marchand board, or any of them of a similar character:

Q. What did the Marchand board examine and consider?—A. They examined and considered the damages consequent on the rise in price of materials and labor, from the time the contracts were made by these parties until the termination, consequent upon delays by the Government in furnishing the plans and drawings.

Q. For what purpose was that board convened?—A. The Department made contracts with certain parties to build certain vessels. After making those contracts, in consequence of the war the price of materials and labor advanced materially. They were delayed by the Government in consequence of not having the plans and drawings furnished. They made a claim to Congress for damages in consequence of that. Congress passed a law authorizing the Secretary of the Navy to organize a board to consider their claims. It was under that law that the board was organized, of which I was a member.

Q. Was there any specific direction to you, as a board, as to what you were to examine and consider?—A. No, sir; the law of Congress was submitted to us by the Secretary of the Navy, with directions to follow that.

Q. What did you examine and consider under that law?—A. We considered how much would be due each contractor upon the rise of material and labor on the contracts only, and nothing more.

Q. Were other claims presented to you by these parties?—A. Yes, sir.

Q. Why did you not consider them?—A. Because they did not come within the province of the law.

Q. You did not consider and reject them, but you refused to consider them?—A. We refused to consider them.

Q. You ruled them as not within your jurisdiction?—A. We ruled out everything except what the law provided for.

Q. But you considered that the law applied to what?—A. Only to the increased cost consequent upon rise in material and labor during the time they were delayed on the contract proper.

Q. Did you consider any claim for extra work at all?—A. No, sir.

Q. Did you consider any claim for increased cost for extra work?—A. No, sir.

Q. Did you specifically refuse to consider any such claim?—A. We did.

Q. In making your report did you allow for anything of that kind?—A. Nothing.

Q. I would ask the gentleman why his board refused to entertain any claims for extra work?—A. Because the construction of the law did not permit it.

That Congress has in the past comprehended the injustice of permitting these contractors and others similarly situated to bear the immense losses they suffered under the circumstances stated, has been made apparent in various proceedings had at different times since the close of the war, sometimes by one House acting separately and independently, sometimes by the joint action of both Houses—notably in the former case the action of the Senate of March 9, 1865, which led to the organization of the Selfridge board, and of the latter by the act of March 2, 1867, which resulted in the organization and report of the Marchand board, to say nothing of the various special acts of Congress and numerous reports submitted from the committees of the respective Houses from time to time. Among the latter reference might be properly made to the following: Report of Senator Nye, Senate Report No. 45, second session, Twenty-ninth Congress; Senate Report No. 37, second session, Forty-second Congress; Representative Stone's report, No. 17, second session, Thirty-ninth Congress.

A bill to pay these claimants directly the amount of their claims, as reported by the Selfridge board, passed the House of Representatives unanimously in the third session of the Twenty-seventh Congress. Various special acts have been passed covering similar cases, some of them included in the report of the Selfridge board, to wit:

One of the awards has been paid by joint resolution of March 30, 1867 (15 Stats., 353), by which Donahue, Ryan & Secor were paid \$179,000 for losses sustained by them in constructing the *Comanche*, Amount allowed by the board, \$179,993.80.

In addition, the following special acts have been passed to relieve contractors in similar cases, to wit:

Act of February 18, 1873, to relieve the heirs of George C. Bester, \$125,000. (17 Stats., 733.)

Act of June 1, 1872, to pay Charles W. Whitney \$50,000. (17 Stats., 671.)

Act of June 10, 1872, to pay J. S. Underhill \$23,310.75. (17 Stats., 691.)

Act of March 2, 1875, to pay Daniel S. Mershon, jr., \$46,715.08. (18 Stats., 635.)

The contractors for building the dome of the Capitol were awarded and paid \$96,000 for increase in the price of labor and material during its construction. The Government prolonged the time of its completion. (See Senate Report No. 132, first session, Thirty-ninth Congress.)

John Ericsson was paid \$1,070,438.93 on the *Puritan* (U. S. Statutes, June 25, 1864, Vol. 13, 409) for increased cost of labor and materials.

Miles Greenwood, of Cincinnati, Ohio, was paid \$76,000 for increased cost of labor and material in building the United States vessel *Tippecanoe*, in 1873.

Your committee is of opinion that the claimants, in view of the circumstances, are entitled to relief, and therefore report back the bill and recommend its passage.



THOMAS STACK.

MAY 25, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CLANCY, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 4495.]

The Committee on War Claims, to whom was referred the bill (H. R. 4495) for the relief of Thomas Stack, report as follows:

In August, 1862, the Navy Department entered into contract with Thomas Stack & Co. for the construction of the double-ender vessel *Metacomet*. The contractors applied to Congress for an additional allowance over the contract price paid therefor by the Navy Department, and a board of officers was appointed to examine their claims, under the following resolution, passed in the Senate March 9, 1865:

IN THE SENATE OF THE UNITED STATES,
March 9, 1865.

Resolved, That the Secretary of the Navy be requested to organize a board of not less than three competent persons, whose duty it shall be to inquire into and determine how much the vessels of war and steam machinery contracted for by the Department in the years 1862 and 1863 cost the contractors over and above the contract price, and the allowance for extra work, and report the same to the Senate at its next session, none but those who have given satisfaction to the Department to be considered.

Under said resolution the honorable Secretary of the Navy appointed a board consisting of Commodore Thomas O. Selfridge, Chief Engineer Alexander Henderson, and Paymaster C. H. Eldridge, which convened at the Brooklyn navy-yard June 5, 1865, and continued in session for more than six months.

The board, after a critical examination of the bills of cost presented by the several contractors for vessels and steam machinery contracted for in the years 1862 and 1863, who have appeared and made sworn statements, has determined the excess of cost in the several cases, over and above the contract price and allowance of extra work, to be as follows:

Double-enders, wooden hulls.

Name of vessel.	Contractor.	Excess of cost determined by board.
* * *	* * *	*
Metacomet.. .. .	Thomas Stack & Co.	\$16,351.36

That Congress has in the past comprehended the injustice of permitting these contractors and others similarly situated to bear the immense losses they suffered under the circumstances stated has been made apparent in various proceedings had at different times since the close of the war, sometimes by one House acting separately and independently, sometimes by the joint action of both Houses—notably in the former case the action of the Senate of March 9, 1865, which led to the organization of the Selfridge board, and of the latter by the act of March 2, 1867, which resulted in the organization and report of the Marchand board, to say nothing of the various special acts of Congress and numerous reports submitted from the committees of the respective Houses from time to time. Among the latter reference might be properly made to the following: Report of Senator Nye, Senate Report No. 45, second session Twenty-ninth Congress; Senate Report No. 37, second session Forty-second Congress; Representative Stone's report, No. 17, second session Thirty-ninth Congress.

A bill to pay these claimants directly the amount of their claims, as reported by the Selfridge board, passed the House of Representatives unanimously in the third session of the Twenty-seventh Congress. Various special acts have been passed covering similar cases, some of them included in the report of the Selfridge board, to wit:

One of the awards has been paid by joint resolution of March 30, 1867 (15 Stats., 353), by which Donahue, Ryan & Secor were paid \$179,000 for losses sustained by them in constructing the *Comanche*. Amount allowed by the board, \$170,993.80.

In addition, the following special acts have been passed to relieve contractors in similar cases, to wit:

Act of February 18, 1873, to relieve the heirs of George C. Bester, \$125,000. (17 Stats., 733.)

Act of June 1, 1872, to pay Charles W. Whitney \$50,000. (17 Stats., 671.)

Act of June 10, 1872, to pay J. S. Underhill \$23,310.75. (17 Stats., 691.)

Act of March 2, 1875, to pay Daniel S. Mershon, jr., \$46,715.08. (18 Stats., 635.)

The contractors for building the dome of the Capitol were awarded and paid \$96,000 for increase in the price of labor and material during its construction. The Government prolonged the time of its completion. (See Senate Report No. 132, first session Thirty-ninth Congress.)

John Ericsson was paid \$1,070,438.93 on the *Puritan* (U. S. Statutes, June 25, 1864, Vol. 13, 409) for increased cost of labor and materials.

Miles Greenwood, of Cincinnati, Ohio, was paid \$76,000 for increased cost of labor and material in building the United States vessel *Tippecanoe*, in 1873.

Your committee are strongly of the opinion that the claimant, in view of the circumstances, is entitled to relief, and therefore recommend the passage of the bill.

ENGINEER CORPS OF THE NAVY.

MAY 25, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. MCALEER, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany S. 139.]

The Committee on Naval Affairs, to whom was referred the bill (S. 139) terminating the reduction in the number of the Engineer Corps of the Navy, submit the following report:

A bill (H. R. 378) identical in terms with this was considered by the committee and is now on the Calendar of the House.

Your committee adopt said report and earnestly urge the passage of the Senate bill.

[House Report No. 440, Fifty-second Congress, first session.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 378) terminating the reduction in the Engineer Corps of the Navy, respectfully report:

This bill asks simply that the number of officers now in the Engineer Corps of the Navy be retained, without any further reduction by the operation of an act of Congress dated August 5, 1882, and in view of the fact that the numbers of that corps are now far below what is required for efficiency, it is earnestly recommended that the bill be passed at once.

The honorable the Secretary of the Navy says in his annual report for 1890 that "At present there are not enough engineer officers in the Navy for ordinary working purposes, and if no additional ships were building an enlargement of the corps would be necessary," which statement is emphasized again in the Secretary's report for 1891. Legislation is now pending providing for an increase of the Engineer Corps in accordance with the above-quoted recommendation of the Secretary of the Navy, but to prevent the corps being reduced below its present membership in the meantime this bill is submitted for the action of Congress.

DWIGHT HALL.

MAY 25, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 1692.]

The Committee on Claims, to whom was referred the bill (H. R. 3714) for the relief of Dwight Hall, having had the same under consideration and made a favorable report thereon to the House (see Report 715), now make this supplementary report, as follows:

The committee recommend that said bill (H. R. 3714) lie upon the table and that Senate bill 1692 be substituted therefor, and that the House concur in the passage of said Senate bill 1692.



NATIONAL NEW HAVEN BANK.

MAY 25, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 234.]

The Committee on Claims, to whom was referred the bill (H. R. 2481) for the relief of the National New Haven Bank, of the State of Connecticut, having had the same under consideration and made a favorable report thereon to the House (see Report 667), now make this supplementary report, as follows:

The committee recommend that said bill (H. R. 2481) lie upon the table and that Senate bill 234 be substituted therefor, and that the House concur in the passage of said Senate bill 234.

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REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

REPORT

FOR THE YEAR 1881

The Commission on the subject of the land office, created by chapter 108 of the Laws of 1879, and continued by chapters 108 of the Laws of 1880 and 1881, has the honor to submit to the House of Representatives the following report.

STATUTES RELATING TO PATENTS.

MAY 25, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BUCHANAN, from the Committee on Patents, submitted the following

REPORT:

[To accompany H. R. 601.]

The Committee on Patents, to whom was referred the bill (H. R. 601) revising and amending the statutes relating to patents, would respectfully submit the following report:

The proposed legislation deals with several features of the existing system. The nature of these provisions, the scope and effect of each proposed change, and the reasons impelling thereto will be dealt with under a separate head.

These will be better understood if, primarily, we examine the system as a whole, its origin, and subsequent development.

THE ORIGIN OF OUR PRESENT LAW.

We derive our conception of the granting of letters patent, conferring a monopoly of production or use of a machine, or composition of matter, or new and useful improvement therein for a time limited by such letters from Great Britain. The practice had there grown up of conferring patents by the Crown, without the existence of any statute law authorizing their issue. A favorite at court, the needy relative of some powerful man, a lucky schemer, was given the sole right by royal grant to produce certain articles or to furnish certain supplies. These patents were originally monopolistic grants for the full use or traffic in articles long known to a very large degree. But few of them were for the sole enjoyment of home need, invention, or discovery.

The abuse of this power became so great that in 1624, during the reign of James I, Parliament passed the famous statute of "monopolies," cutting off the monopolies granted by the King, but excepting from the operation of the act "letters patent and grants of privilege for a term of twenty-one years or under, heretofore made, of the sole working or making of any manner of new manufacture, within this realm, to the inventor or inventors of such manufacture."

It will be noticed that although the statute in terms does not give the Crown the right to grant letters patent, for the sole working of any new manufacture, to the first inventor of such manufacture, yet it so accurately and carefully defines the exception that it really becomes an inferential authorization so to do. The fact that no British statute, passed since, in terms confers this authority shows that this negative

permission has been thought sufficient. This provision agrees very nearly in its fundamental elements with our own statute:

First. The letters are issued by the supreme executive.

Second. They are issued for a limited term.

Third. During the term so limited they confer the sole right.

Fourth. The manufacture must be new.

Fifth. The grant limited to the inventor.

Subsequently the British Parliament has revised, amended, and codified the patent laws of the Kingdom, but of these we have no present occasion to speak.

While the law of 1624 contains the limitation, "within this realm," yet it appears that patents were granted by the King to residents in the American colonies. Perhaps the word "realm" was given its broadest meaning to help out kingly desire. Sybella Masters, wife of Thomas Masters, of Philadelphia, seems to have been a woman of inventive turn. The King granted her three patents, one for curing corn, the other for weaving chip hats, and in 1717 her husband petitioned the lieutenant-governor of Pennsylvania for leave to record the same in Pennsylvania, and received the desired permission.

Some of the colonies also granted patents. In the statutes of Connecticut for the year 1672 is found, on page 52, the following provision:

It is ordered that there shall be no monopolies granted or allowed amongst us but of such new inventions as shall be judged profitable to the country, and for such time as the general court shall deem fit.

Under this provision the colony granted several patents.

Massachusetts in 1641 granted to Samuel Winslow the sole right for ten years of making salt by his improved method.

After the close of the war of the Revolution, and before the adoption of the Federal Constitution, the several States granted patents. New Hampshire made several grants. The contest of Fitch and Rumsey before several of the State legislatures for exclusive grants for the propulsion of boats by steam are known to any student of the early history of our country. The Patent Office Report for 1850 gives a good many illustrations of this practice of the States.

Section 7 of the act of Congress approved February 21, 1793, provides:

That where any State before its adoption of the present form of government shall have granted an exclusive right to any inventor, invention, etc.

It will be seen that when the framers of the new Constitution came to deal with this matter they had no new subject in hand. The granting for a limited term to an inventor of some new and useful machine the sole right to make, use, and vend such invention was a practice then nearly two centuries old, and one which, in this country, had existed for a century and a half.

In the light of that experience they provided (see Art. I, Sec. 8, Constitution United States):

The Congress shall have power * * * to promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries; * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

The object to be attained and the reason for the constitutional grant of power are imbedded in the grant itself. They are "to promote the progress of science and the useful arts." There is nothing said about any desire or purpose to secure to the author or inventor his "natural right to his property." The monopoly given him is avowedly given,

not primarily for his benefit, but for the benefit of society at large. The claim made so often, especially of recent years, that the author or inventor has a natural right to the exclusive use of his production, and is therefore entitled, as of course, to legislation securing to him the full enjoyment of this right, does not seem to have been specifically passed upon by the fathers; but one thing is absolutely certain, they did not make this constitutional grant of power upon any such ground. Much confusion of thought has arisen from the assertion of this right as an innate, absolute right existing in the individual, and a contemporaneous neglect to examine the limitation of the power given in the premises to Congress.

It is perhaps safe to say that for the past twenty or thirty years no Committee on Patents has had an existence which has not had the fortune to listen to long and very interesting arguments claiming the existence in the author or inventor of this right, and the duty of Congress to give by legislative enactment full and complete enjoyment of that right. Whatever may be the correct conclusion as to the existence of any such right, the duty of Congress is measured by its power, and that power can be no broader than the words conferring it.

It is unnecessary to call attention to the fact that a natural right is in its very nature and essence continuous and permanent, and that the words limiting the power to grant patents except "for limited times" seem to be entirely inconsistent with the nature and character of such right. It is sufficient to read the words of the grant in their plain every-day meaning to discover that the good of society was the only thing provided for, or intended to be provided for. If this legislation by Congress upon the subject of patents is authorized for this avowed purpose, and this purpose alone, it becomes the duty of the legislator to carefully ascertain whether this object has been attained in actual practice. This leads, first, to an examination as to

LEGISLATION UNDER THE CONSTITUTIONAL GRANT.

The first law passed by Congress under this constitutional grant was approved April 10, 1790. This law was crude in its provisions and unsatisfactory in practice. It provided for the grant of letters-patent upon a petition to the Secretary of State, the Secretary of War, and the Attorney-General, if they, or any two of them, should deem the invention or discovery "sufficiently useful and important." There was no provision made for any examination as to novelty, the statements of the petition as to novelty being the only proof upon that point. There was no provision as to abandonment nor limitation of time after the first public use within which the inventor must apply for his grant. There was a provision forfeiting a patent obtained surreptitiously or upon false suggestion, and in suits for infringement the defendant might plead the general issue, give notice of, and produce in evidence at the trial, any special matter tending to prove that the specification filed by the plaintiff when he obtained his patent did not contain the whole of the truth concerning his invention or discovery, or that it contained more than was necessary to produce the effect described, and if, upon the production of such evidence, it appeared that the concealment of part or the addition of more than was necessary was intended to mislead, or actually had mislead the public, so that the effect described could not have been produced by the means specified, the verdict should be for the defendant. The benefits of this act were open to any person or persons.

This act continued in force only until February 21, 1793, when it was repealed, and the new act, approved the latter date, took its place.

This act of February 21, 1793, provided for a petition to be addressed to the Secretary of State. The petition was to be verified under oath and accompanied by a specification. The provision as to deeming the invention or discovery sufficiently important or useful was omitted, and without any examination either as to novelty or usefulness the Secretary of State prepared the letters patent, transmitted them to the Attorney-General for examination as to conformity to the act, and upon return, certified to be thus conformable, the President signed the same and the letters were issued.

The penalty for infringement was increased to three times the price for which the patentee had usually sold or licensed to other persons the use of his invention. The provisions as to defense were the same, with the addition that the defendant might also prove that the thing secured by the patent was not originally discovered by the patentee, but had been in use, or had been described in some public work, anterior to the supposed discovery of the patentee, or that the patentee had surreptitiously obtained a patent for the discovery of another person.

It further provided that anyone holding a grant from a State issued before the adoption of the present form of Government, he might, upon surrender of his State grant, receive a grant under the new law.

It provided for the arbitration of interfering applications by a board of three persons, one to be drawn by each applicant, and the third appointed by the Secretary of State. Where one party failed to choose an arbitrator the patent issued thereupon to the other party. Like the previous act it provided proceedings for the annulment of patents improperly procured. The benefits of this act were limited to citizens of the United States.

The act of June 7, 1794, merely saved alive suits commenced under the former act prior to its repeal. The act of April 17, 1800, extended the benefits of the act of February 21, 1793, to aliens who, at the time of petitioning thereunder, had resided for two years within the United States, and repealed the provision for treble damages.

The act of February 15, 1819, gave original jurisdiction to the United States circuit courts of all actions, suits, controversies, and cases arising under the patent laws, as well in equity as at law, with power, upon bill filed, of granting injunctions, and with right of appeal to the Supreme Court of the United States.

The act of July 3, 1832, provided for the publication of the list of expired patents, with the names of the patentees. The act further provided for the renewal of a patent upon public notice and the filing of a petition, duly verified, accompanied by a statement of the ascertained value of the invention and of the receipts and expenditures of the patentee, so as to exhibit his profit or loss arising therefrom, and upon the support of such allegations by testimony duly taken.

It also provided for the surrender of letters invalid by inadvertence, accident, or mistake, without fraudulent or deceptive intention, and the issue of new and valid letters in lieu thereof.

By the act of July 13, 1832, the benefits of the patent laws were extended to every alien who, at the time of petitioning for a patent, was resident in the United States and had declared his intention, according to law, to become a citizen thereof. But patents granted under this act became void in case of failure by the patentee, for the space of one year from the issue of his patent, to introduce into public use in the United States the invention for which the patent was granted, or failure

for six months to continue such use after introduction, or on failure to become a citizen of the United States, agreeably to notice given, at the earliest period within which he became entitled to become a citizen.

These various acts were all repealed, saving existing rights, and their place taken by the act approved July 4, 1836. This latter act comprised twenty-one sections, and was the first legislative attempt to give the country a complete patent system. It established in the Department of State an office it denominated the Patent Office, and provided for the appointment of a chief officer to be known as the Commissioner of Patents. The office was provided with a clerical force, its duties were defined, and its powers specifically named.

Provision was made for full and complete specifications, drawings, and models to accompany the applications. Upon the filing of these, and the payment of the fee, it was made the duty of the Commissioner to make or cause to be made an examination of the alleged new invention or discovery as to utility, novelty, and prior publicity or use, with right of appeal on the part of the applicant to a board of examiners, to be composed of three disinterested persons appointed for that purpose by the Secretary of State. Such board was to hear the appeal upon reasonable notice to the applicant and to the Commissioner, and the decision was binding. A similar proceeding was authorized upon the decision of the Commissioner as to priority between interfering applications.

Provision was made for the filing of caveats, and for the surrender of patents invalid from defective specifications and the reissue in a proper form. The provision, formerly existing, of treble damages for infringement was restored. The defense of concealment or addition for the purpose of deceiving was continued, as well as those of noninvention, prior invention, prior publicity, prior use or sale with the consent and allowance of the patentee before application, surreptitiously or unjustly obtaining a patent for that which had in fact been invented by another who was using due diligence in adapting and perfecting the same, and in case of alien, failure for eighteen months to put and continue on sale to the public, on reasonable terms, the invention for which the patent had issued, were all provided for.

Provision was made under certain conditions for an extension for an additional term of seven years of patents which, without neglect or fault on the part of the patentee, had proved unremunerative.

It also provided for a library for the use of the office of scientific works and periodicals, both foreign and American, calculated to aid the examiners in the discharge of their duties. It also made provision for the arrangement and classification of the models.

It provided for the assignment of patents, or of interests therein, and for the record of such assignments.

One singular feature of this law was the provision allowing a patentee to make additions to his patent by adding the description and specification of any new improvement of the original invention or discovery, invented or discovered by him subsequent to the date of his patent, to the original description and specification. In such case an extra fee was paid, and the like proceedings were had as to examination, etc., as in the case of an original application, and the Commissioner certified on the margin of such annexed description and specification, the time of its being annexed and recorded. Thereafter the addition had the same effect in law, to all intents and purposes, as though it had been embraced in the original description and specification,

As already stated, this act first gave to this country a well-defined and properly regulated patent system. The effect upon invention was at once apparent. From 1790 to 1836, a period of forty-six years, there were but 10,020 patents granted. From 1836 to 1882, the succeeding period of forty-six years, there were almost 220,000. Of course the growth of the nation had much to do with the great increase, but undoubtedly the new and improved legislation fostered and encouraged invention.

This act was supplemented by the act of March 3, 1837, made necessary by the fire which in December, 1836, destroyed the office and its records, and which provided for the collection and record of patents or assignments issued or executed prior to December 15, 1836, that certified copies of such records should be in evidence in the United States courts, the issue of new patents in place of those lost or destroyed by the fire on or before December 15, 1836, the procurement of new records to take the place of those thus destroyed.

It made the first provision for the filing of disclaimers, and it provided that in cases where by mistake, accident, or inadvertence, and without any willful default, or intent to defraud or mislead the public, the patentee shall have claimed more than he was the first and original inventor of, the patent should be rated for the remainder, if such remainder was a material and substantial part of the thing patented and definitely distinguishable from the other parts claimed without right. The remainder of this act is merely executive.

The act of March 3, 1839, changes the appeal from the decision of the Commissioners from the board of examiners to the chief justice of the district court of the United States for the District of Columbia.

The act of August 29, 1842, provides for the patenting of designs. It also provides a penalty for falsely marking a thing "patent" or "letters-patent" or "patentee" or for falsely marking anything with the name of some other person who holds a patent. It also made it the duty of each patentee or his assign, under a penalty, to mark each article manufactured under a patent with the date of such patent.

The act of May 27, 1848, restricts the right to extend patents solely in the Commissioner.

By the act of March 2, 1861, the term of a patent was made seventeen years instead of fourteen, and all extensions were abolished.

Subsequent legislation upon this subject down to December 1, 1873, is to be found codified and arranged in the Revised Statutes of the United States approved June 22, 1874. The main provisions are to be found under Titles XI, XIII, XVII, IX. The Supplement to the Revised Statutes, Vol. 1, contains also legislation on pages 136, 166, 40, 241. Subsequent acts, affecting mainly detail, are to be found in U. S. Stat. XXV, p. 87; U. S. Stat. XXII, p. 625, also p. 490 and p. 298; U. S. Stat. XXIV, p. 387.

This legislation gives us the system of to-day. Under it patents for the term of seventeen years, nonextensible, are granted to citizen or alien, being the original inventor, for any new machine, cut, manufacture, or composition of matter, of a useful nature, not theretofore known or in public use for the term of two years, and not theretofore described in any printed book or publication, and not known or used by others in this country, but in case of the patentee having previously patented the same abroad, his patent here shall expire with the expiration of his first expiring foreign patent. Under the operation of these various laws the inventive genius of our people has been so stimulated and encouraged as to lead to the following—

GROWTH IN PATENTS.

As stated, the first forty-six years under our patent laws only resulted in the issue of 10,020 patents. The issue for the one year ending December 31, 1891, was 23,244, and the total issue from July 2, 1836, up to the latter date was 498,807. These figures do not include trade-marks and labels. They do include reissues. To put it briefly, forty-six years yielded 10,020, fifty-six years have yielded 498,807.

The patents granted during the year 1890 were distributed as follows:

Alabama	1,476	Louisiana	2,559	Oregon	945
Arizona.....	106	Maine	5,011	Pennsylvania	51,140
Arkansas.....	970	Maryland	7,400	Rhode Island	6,521
California.....	9,957	Massachusetts ...	48,990	South Carolina....	1,207
Colorado	1,578	Michigan	14,111	Tennessee	2,923
Connecticut	21,810	Minnesota	4,075	Texas	3,782
Dakota	513	Mississippi	1,354	Utah.....	308
Delaware.....	1,084	Missouri.....	11,066	Vermont	3,500
District of Columbia	4,974	Montana	276	Virginia	3,772
Florida.....	502	Nebraska.....	1,678	Washington.....	370
Georgia	2,480	Nevada.....	433	West Virginia.....	1,352
Idaho	96	New Hampshire ..	4,240	Wisconsin	8,783
Illinois	33,642	New Jersey.....	19,630	Wyoming	100
Indiana	13,138	New Mexico.....	139	U. S. Army.....	214
Indian Territory...	33	New York.....	101,967	U. S. Navy.....	93
Iowa	8,999	North Carolina..	1,599	Citizens residing	
Kansas	3,463	Ohio	34,606	abroad	17
Kentucky	4,783				

The cash receipts of the office for the year ending December 31, 1891, were \$1,271,285.78 and the expenditures \$1,139,713.35, leaving a surplus on the year's business of \$131,572.43. Every year but 1837, 1840, 1841, 1853, 1854, 1856, 1857, and 1861, since 1836, the office has yielded a surplus. This surplus of earnings amounted, January 1, 1892, to \$4,004,317.67. This has been the operation of our system as to growth and expense. This leads to the inquiry, second, as to

THE EFFECT OF OUR PATENT LAWS.

This inquiry is one of interest. A system is not necessarily a beneficent one because it has had a rapid and marvelous growth. Perhaps the inquiry will be kept clear and the results be more plain if it is pursued on two separate lines. While the trade and commerce of our country is vast and of great importance, yet that very trade rests upon and has its being from two sources of production, manufactures and agriculture. Mining gives but a small share of its prosperity to trade, and, in fact, with the employment of the modern appliances, mining itself can be said to be a manufacture.

It goes without saying that our manufactures are almost entirely, in the bulk of their product, the result of inventive genius. Without the busy machine the product would be greatly lessened. Compare the dame of a hundred years ago, with her spinning-wheel, to one of the monster spinning mills of to-day. Think of the weaver of that time sitting at his hand loom laboriously throwing his shuttle, thread by thread, and compare his daily product with that of a power loom in the year 1892. Recall the smith slowly forging, nail by nail, and then witness the ruddy stream falling from a modern machine for cutting nails. And so all along the lines of production of manufactured goods.

Our trade rests largely upon our product of manufactures, and that

product is almost entirely the result of machine process or art thought out and put in operation by the inventor.

The following table of the growth of our manufactures will show that even as our patent system has grown our product of manufactures has kept pace with it. The census reports show our manufactures to have been—

1830.....	\$80, 848, 210
1850.....	1, 019, 166, 616
1860.....	1, 885, 861, 676
1870.....	4, 232, 325, 442
1880.....	5, 369, 579, 191
1890 (estimated in part)	8, 000, 000, 000

The same genius has increased the efficiency of machine and process so that the product per annum per hand employed has steadily increased. From 1850 to 1870 this product per hand employed had increased nearly 100 per cent, and that, too, in the face of a decrease of about 20 per cent in the hours of labor.

This increased efficiency of machine and process has so cheapened production that almost all kinds of manufactured goods have been largely reduced in price. Wire nails sell for but little more than the price of the wire, and cotton cloth sells for but little advance on the raw cotton.

In the other line of production, agriculture, the increase of production has been as marked.

The crop products of the United States for the year 1891 were:

Articles.	Bushels.	Value.
Wheat.....	611, 780, 000	\$513, 472, 711
Corn.....	2, 060, 154, 000	836, 439, 228
Oats.....	738, 394, 000	232, 312, 267
Total.....	3, 410, 328, 000	1, 582, 224, 206

Of the wheat Minnesota raised 55,333,000 bushels, and the two Dakotas 81,819,000 bushels. Does any sane man believe for a moment that this vast product could have been planted by hand in the old-fashioned way, and harvested by the ancient methods, to say nothing of thrashing? From the gang plow which broke the ground to the thrasher and separator which prepared the wheat for market every step in the production was marked by the use of some invention. Even with this, the need is pressing for more laborers. Last year wheat rotted in the Northwest for want of men to help operate the machines. Suppose no machines had been in existence? It is fair to suppose that the product would have been reduced 90 per cent.

The labors of one man is multiplied tenfold by a self-binding reaper, and much more than that by a steam thrasher. These machines themselves have been steadily reduced in price. The improvement in the tools and methods which produce them have made their cheaper production possible. None of this had been possible had not the inventor been encouraged. When a farmer complains that his machinery is a large item of cost the complaint is not without foundation, but he must also remember that the machinery is indispensable to a larger production. With the old-fashioned hand-sowing, the grain cradle, and the flail the product would greatly dwindle, and with the present price of farm labor that lessened product would cost much more per bushel to produce. Were labor as cheap and plentiful here as in India or China,

he could dispense with his seeder, his reaper, his thrashing machine. At present they are indispensable.

The conclusion is unavoidable that in all the lines of production inventive genius has been potent in increasing the amount of product and in lessening the cost of such product. This lessening of cost has enabled the producer to sell cheaper with as much profit. It has by its effect upon trade and its increased volume stimulated commerce and had a beneficial effect upon all lines of business. Surely such an effect must indicate clearly the duty of Congress to encourage by every legitimate means the exercise of the inventive faculty. This has been the aim in the past, and our patent laws as a whole have been of much benefit to the country.

But as time passes conditions change, and to secure the highest and best results readjustments in some particulars become necessary. Practice has demonstrated the necessity of some alterations in our patent laws, and to secure that the bill herewith reported was drafted and introduced. Discussion before the committee resulted in the adoption of some amendments to the bill, which the committee believe would increase its usefulness and effectiveness should the same become a law. Your committee therefore recommend the following

AMENDMENTS TO THE BILL.

Section 2: Strike out all after the word "amended," in line 3, down to and including line 24, and in lieu thereof insert:

So as to read as follows:

"SEC. 4887. No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid by reason of its having been patented or caused to be patented in a foreign country prior to the application for a patent on the same invention in this country, but every such patent hereafter granted shall be limited in duration to the term for which any such prior patent had been granted, or if there be more than one foreign patent prior to the filing of the application in this country, then said patent granted thereon shall be limited in duration to the shortest term for which any such prior foreign patent had been granted, but in no case shall any such patent be granted for a term exceeding seven-teen years.

"No patent which shall hereafter be granted shall be held to be limited in its duration by the term of a prior foreign patent for the same invention, unless the date from which the term of said foreign patent commences to run was prior to the date of filing of the application for the patent in this country. This section shall not apply to any patents which have heretofore expired by virtue of the acts in force prior to the passage of this act."

Section 9, line 4, strike out "may" and insert "shall." Same line, strike out "signed."

Same section, line 12, strike out "may."

Strike out line 13 and insert, "shall be transmitted by the clerk of said court to the Patent Office for record."

Section 10, strike out the section, and in lieu thereof insert new section as follows:

SEC. 10. That a court of equitable jurisdiction may pass the title to letters patent of the United States by decree, without any act on the part of the defendant, whenever in its opinion that shall be the proper mode to carry into effect a judgment or order of the court, and a copy of such decree shall be sent to the Patent Office by the clerk of said court for record; and such decree, while in force, shall be as effectual to transfer said letters patent or any interest therein as a conveyance to the same effect executed by such defendant. It is hereby made the duty of the Commissioner of Patents to have recorded all such certificates, orders, or decrees when received, the same as assignments are now recorded, and without any fee or charge therefor.

Add new section as follows:

SEC. 13. That section four thousand nine hundred and twenty-one of the Revised Statutes be, and the same is hereby, amended by adding thereto the following clauses: "But hereafter, whenever a patent is alleged to be infringed, the patentee or his representative shall seek his remedy by bringing suit in the first instance against the manufacturer or vendor of the article alleged to infringe said patent, and shall in no case bring suit against any individual who shall have purchased, in good faith, an article of a regular dealer in the open market for his own use: *Provided*, That such individual purchaser shall give to said patentee or his representative, at his request, the name and residence of the party from whom said article was purchased: *And provided also*, That this exemption from liability of the individual purchaser shall not apply to any corporation, firm, or company, nor to any corporation or party as to any patented machine or process made or used by them for the manufacture of an article or product for sale. Actions at law or suits in equity for infringements of patent rights may be brought in the district where the infringement occurs, whether the defendant or defendants be domiciled therein or in some other district; and where an infringement is begun in one district and completed in another, or is partly in one district and partly in another, the plaintiff or complainant may bring his action or suit in either district at his option."

Add an additional new section, as follows:

SEC. 14. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby, repealed.

So that the bill as amended will read as follows:

A BILL revising and amending the statutes relating to patents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-eight hundred and eighty-six of the Revised Statutes be, and hereby is, amended by inserting immediately after the words "on sale" the words "or described in any patent or printed publication issued in this country," so that the section as amended will read:

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, and not in public use or on sale or described in any patent or printed publication issued in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, obtain a patent therefor."

And the fifth clause of section forty-nine hundred and twenty of the Revised Statutes is hereby amended by inserting immediately after the word "country" the words "or described in any patent or printed publication issued in this country," so that said clause as amended will read:

"Fifth. That it had been in public use or on sale in this country, or described in any patent or printed publication issued in this country, for more than two years before his application for a patent, or had been abandoned to the public."

This section (one) shall apply only to patents hereafter granted.

SEC. 2. That section forty-eight hundred and eighty-seven of the Revised Statutes be, and the same hereby is, amended so as to read as follows:

"SEC. 4887. No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid by reason of its having been patented or caused to be patented in a foreign country prior to the application for a patent on the same invention in this country, but every such patent hereafter granted shall be limited in duration to the term for which any such prior patent had been granted, or if there be more than one foreign patent prior to the filing of the application in this country, then said patent granted thereon shall be limited in duration to the shortest term for which any such prior foreign patent had been granted; but in no case shall any such patent be granted for a term exceeding seventeen years.

"No patent which shall hereafter be granted shall be held to be limited in its duration by the term of a prior foreign patent for the same invention, unless the date from which the term of said foreign patent commences to run was prior to the date of filing of the application for the patent in this country. This section shall not apply to any patents which have heretofore expired by virtue of acts in force prior to the passage of this act."

SEC. 3. That section forty-eight hundred and ninety-four of the Revised Statutes be, and hereby is, amended by erasing the word "application" and substituting the word "petition" in lieu thereof; also by erasing the words "two years," in each

place where they occur, and substituting in lieu thereof the words "six months," so that the section as amended will read:

"SEC. 4894. All applications for patents shall be completed and prepared for examination within six months after the filing of the petition, and in default thereof, or upon failure of the applicant to prosecute the same within six months after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable."

This section (three) shall apply only to the applications hereafter filed.

SEC. 4. That section forty-eight hundred and ninety-eight of the Revised Statutes be, and the same is hereby, amended by inserting the word "license" immediately after the word "grant," so that the section, as amended, will read:

"SEC. 4898. Every patent, or any interest therein, shall be assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States. An assignment, grant, license, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from the date thereof."

This section (four) shall, after the expiration of two years from and after the passage of this act, apply to now-existing written licenses not then recorded.

SEC. 5. That section forty-nine hundred and two of the Revised Statutes be, and hereby is, amended by erasing the words "citizens of the United States," and substituting in lieu thereof the word "person;" also by erasing the words "deposit the description, specification, drawings, and model of such application in like manner in the confidential archives of the office," and substituting in lieu thereof the words "withhold said application from allowance and issue pending the proceedings hereinafter provided for;" also by erasing the words "description, specification, drawings, and model," and substituting in lieu thereof the words "application for patent;" also by erasing the last sentence of said section, so that the section as amended will read:

"SEC. 4902. Any person who makes any new invention or discovery, and desires further time to mature the same, may, on payment of the fees required by law, file in the Patent Office a caveat setting forth the design thereof and of its distinguishing characteristics, and praying protection of his right until he shall have matured his invention. Such caveat shall be filed in the confidential archives of the office and preserved in secrecy, and shall be operative for the term of one year from the filing thereof; and if application is made within the year by any other person for a patent with which such caveat would in any manner interfere, the Commissioner shall withhold said application from allowance and issue pending the proceedings hereinafter provided for, and give notice thereof by mail to the person by whom the caveat was filed. If such person desires to avail himself of his caveat he shall file his application for patent within three months from the time of placing the notice in the post-office in Washington, with the usual time required for transmitting it to the caveator added thereto, which time shall be indorsed on the notice."

SEC. 6. That section forty-nine hundred and four of the Revised Statutes be, and hereby is, canceled and repealed, and the following substituted therefor and enacted in lieu thereof:

"SEC. 4904. Whenever, in the opinion of the Commissioner of Patents, an application for a patent interferes with another pending application, or with an unexpired patent, he shall require from each such applicant, within a time prescribed by the Commissioner, a preliminary statement, under oath, giving the history of his production of the invention in controversy, in such detail as the Commissioner shall deem reasonable, which statement shall be preserved in secrecy, but subject to the order of a proper court in a proceeding arising in such court under section forty-nine hundred and fifteen of the Revised Statutes. After the applicant first to file his application for patent as aforesaid has filed his said preliminary statement, the Commissioner may issue a patent to him for the invention in controversy. Each such interfering applicant who fails to file his preliminary statement as aforesaid shall thereby forfeit his right to a patent for the invention in controversy."

This section shall apply to applications for patents filed after the passage of this act.

SEC. 7. That section forty-nine hundred and thirty-four of the Revised Statutes be, and hereby is, amended by inserting immediately after the words "the examiners-in-chief, ten dollars," the words "On every appeal from the primary examiners to the Commissioner, ten dollars."

SEC. 8. That in any suit at law or in equity for infringement of a patent, no damages or profits shall be recovered accruing prior to the six years last preceding the bringing of such suit. This section shall not apply to any suit pending at the passage of this act.

SEC. 9. That whenever in any action any court shall issue an injunction to prevent the transfer of any letters patent of the United States, or of any interest therein, a certificate thereof shall be filed in the Patent Office by the clerk of said court and under the seal thereof, containing the names and residences of the parties to said action, the court in which the same is pending, the number and date of the letters patent referred to, and a copy of said injunction, with the date thereof; and the same shall be duly recorded in the Patent Office, which filing shall be sufficient notice of the pendency of said injunction; and whenever said injunction shall be dissolved or modified a similar certificate thereof shall be transmitted by the clerk of said court to the Patent Office for record.

SEC. 10. That a court of equitable jurisdiction may pass the title to letters patent of the United States by decree without any act on the part of a defendant, whenever in its opinion that shall be the proper mode to carry into effect a judgment or order of the court, and a copy of such decree shall be sent to the Patent Office by the clerk of said court for record; and such decree while in force shall be as effectual to transfer said letters patent or any interest therein as a conveyance to the same effect executed by such defendant. It is hereby made the duty of the Commissioner of Patents to have recorded all such certificates, orders, or decrees when received, the same as assignments are now recorded, and without any fee or charge therefor.

SEC. 11. That the Commissioner of Patents may refund to the payor money paid into the Patent Office by mistake.

SEC. 12. That the Assistant Commissioner of Patents shall perform such duties pertaining to the office of Commissioner as may be assigned to him by the Commissioner, and in the absence of the Commissioner he shall be acting Commissioner.

SEC. 13. That section forty-nine hundred and twenty-one of the Revised Statutes be, and the same is hereby, amended by adding thereto the following clauses:

"But hereafter, whenever a patent is alleged to be infringed, the patentee or his representative shall seek his remedy by bringing suit in the first instance against the manufacturer or vendor of the article alleged to infringe said patent, and shall in no case bring suit against any individual who shall have purchased in good faith an article of a regular dealer in the open market for his own use: *Provided*, That such individual purchaser shall give to said patentee or his representative, at his request, the name and residence of the party from whom said article was purchased: *And provided also*, That this exemption from liability of the individual purchaser shall not apply to any corporation, firm, or company, nor to any corporation or party, as to any patented machine or process made or used by them for the manufacture of an article or product for sale.

"Actions at law or suits in equity for infringements of patent rights may be brought in the district where the infringement occurs, whether the defendant or defendants be domiciled therein or in some other district; and where an infringement is begun in one district and completed in another, or is partly in one district and partly in another, the plaintiff or complainant may bring his action or suit in either district, at his option."

SEC. 14. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

And when thus amended, the committee recommend that the bill do pass.

TIMBER-CULTURE LAWS.

MAY 26, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. PICKLER, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany H. R. 9003.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 2657) to declare the meaning of section 7 of an act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891, have had the same under consideration and respectfully report the accompanying bill as a substitute and recommend its passage.

The act approved May 14, 1880 (21 Stat., 140), allowing contests, provides that—

In all cases where any person has contested, paid the land office fees, and procured the cancellation of any preëmption, homestead, or timber-culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from the date of such notice to enter such lands: *Provided*, That said register shall be entitled to a fee of \$1 for the giving of such notice, to be paid by the contestant and not to be recorded.

Secretary Noble, in his letter of instruction dated April 26, 1891, construing the seventh section of the act of March 3, 1891, in referring to pending contest, says:

The right granted by this (May 14, 1880) statute and the reward thereby promised had induced many thousands of contests and protests as to the good faith and legality of entries for vast numbers of acres of the public domain. Many of these contests and protests had been legally filed under the law and regulations then in force, after more than two years had elapsed from the date of final receipt, and were still pending when the act of March 3, 1891, took effect. There was no limit of time within which these might be filed before patent. The contestants had each paid out, for persons in their circumstances, very considerable sums of money for fees and expenses. Of this general class of contests and protests made against alleged fraudulent or illegal entries very many had been decided before the act of 1891 was passed, and more than 50 per cent were decided in favor of the contestants and protestants, notwithstanding the most liberal construction of laws and facts in support of the entry.

The honorable Secretary of the Interior in his last annual report has this to say in reference to section 7 of said act and the construction placed upon it by the Department:

CONFIRMATION OF ENTRIES.

Section 7 of said act makes special provision for the confirmation of two classes of entries in the following terms:

"All entries made under the preëmption, homestead, desert land, or timber culture laws, in which final proof and payment may have been made and certificate issued, and to which there are no adverse claims originating prior to final entry and which have been sold or encumbered prior to the first day of March, eighteen hundred and

eighty-eight, and after final entry to bona fide purchasers, or incumbrancers, for a valuable consideration, shall, unless upon an investigation by a Government agent, fraud on the part of the purchaser has been found, be confirmed and patented upon presentation of satisfactory proof to the Land Department of such sale or incumbrance: *Provided*, That after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead, timber culture, desert land, or preëmption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him; but this proviso shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor."

In the construction of that portion of said section which applies to entries transferred or encumbered prior to March 1, 1888, it was held in *Axford v. Shanks*, 12 L. D., 250, and same on review, 13 L. D., 292, that the intention of said section is to confirm entries allowed in the absence of adverse claims originating prior to final entry, where parties, relying in good faith upon the issuance of final receipt and certificate, had invested money on the strength of the prima facie title held by the entryman, and that the confirmatory operation of this legislation is not defeated by the pendency of contests or protests, and this construction is now the rule of the Department.

As to entries included within the proviso to said section, where no interests of transferees are involved, it was held, in the Departmental instructions of April 25, 1891, 12 L. D., 522, that said proviso is one of limitation upon contests initiated after the passage of said act, but does not relieve entries from the effect of contests that were pending at the date of said enactment.

It was further held in the construction of said proviso that in all cases where proceedings by the Government have been, or shall be, begun against an entry within two years from the date of the final certificate, said entry will be held to be taken out of the confirmatory operation of said proviso; and that the word "proceedings" in such construction shall be construed to include any action, order, or judgment had or made in the General Land Office canceling an entry, holding it for cancellation, or which requires something more to be done by the entryman to duly complete and perfect his entry, without which such entry would be necessarily canceled. (13 L. D., 1.)

The committee think that the act of March 3, 1891, should have preserved the right of contest provided for by the act of May 14, 1880. The purpose of this bill is to so amend section 7 of said act of March 3, 1891, as to restore as far as possible such right to contestants. The following report was made upon the bill by the Interior Department:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., March 24, 1892.

SIR: I have had the honor to receive by reference of February 29, 1892, from the Hon. George Chandler, First Assistant Secretary of the Interior, Senate bill No. 2130, entitled "A bill declaring the construction of an act entitled 'An act to repeal timber-culture laws, and for other purposes,' approved March 3, 1891," which was submitted to the Department by the Hon. J. N. Dolph, chairman of the Senate Committee on Public Lands, and referred to me as above for report in duplicate and return of papers.

The said bill provides, first: "That the provision contained in section seven of an act entitled 'An act to repeal timber-culture laws, and for other purposes,' approved March third, eighteen hundred and ninety-one, authorizing patents to be issued upon the public lands of the United States when final proof and payment may have made and certificates issued, and which lands have been sold or encumbered prior to the first day of March, eighteen hundred and eighty-eight, to bona fide purchasers or incumbrancers, shall be so construed that it shall not apply in its provisions to or affect any case where a contest was pending in the Land Department prior to the date of the passage of said act;" and the bill provides that "all such

cases shall proceed to a final determination in the same manner as if said act had not been passed."

It will be observed that the provision proposed to be construed relates to final entries made prior to the first day of March, 1888, and has no operation with regard to entries thereafter made or hereafter to be made. By the terms used therein, it applies to all entries of the class defined without reference to the fact whether or not there was a contest pending against them or any of them in the Land Department prior to the passage of said act. This bill proposes by a legislative construction to establish a limitation, not found in the terms of the act, by which such of the class of entries, defined as may have been at the date of the act subject to an existing contract, shall be excluded from the confirmation provided for.

Second. The bill further provides that the said act shall not be construed "to impair in any manner rights which had been acquired under the homestead, preëmption, desert land, or timber culture laws prior to March third, eighteen hundred and ninety-one." It appears, however, that said provision does not operate, under any possible construction, to impair rights acquired under said laws, but confirms rights under existing entries in certain defined cases, and it expressly and clearly excepts any in which there are adverse claims originating prior to final entry, which covers all adverse claims, since no such claims can arise subsequent to final entry.

The mere fact that a contest has been initiated against an existing entry does not necessarily imply even that the contestant has the personal qualifications necessary to entitle him to initiate a right under any of the laws mentioned, much less that he has actually acquired such a right to the land while the questions of law or of fact put in issue in the contest are still undetermined and the contested entry remains intact upon the records. I am, therefore, of the opinion that no legislation is necessary to make the statute clear on this point.

With regard to the point first mentioned, I am of the opinion that the construction placed upon the statute by the Department as above is the correct one, to the effect that the provision was intended to protect the bona fide purchaser or encumbrancer who was led to part with his money on the faith of the final certificates issued by the proper officers of the Government, whether there was a contest pending at the date of its passage or not.

The course of the Government for many years, under its land system, has been such as to lead the people at large to look with confidence on the certificates and receipts issued by the district land officers as evidences of title. To such an extent is this the case, that it has become the custom of the people to accept transfers of title prior to the issue of patents and without other foundation than the presumed regularity of the proceedings of record on which the original papers are issued by the district officers on their adjudications in favor of the entrymen. In innumerable instances, the holders of titles have permitted years to pass without inquiry for the patent, relying with confidence, in the meanwhile, on the papers issued by the district officers. Many patents are now in this office which have waited for years without being demanded by the parties entitled thereto.

It appears, however, that the bill under consideration proceeds on the theory that the holders of the titles in such cases have an inferior equity to the mere contestants, who would take advantage of some supposed irregularity in the proceedings to have their rights set aside and then appropriate the property; that the inconsiderable amount paid by the contestant for the expenses of notices of contests, etc., entitles him to more consideration than the purchaser of the land should enjoy who pays full value therefor, and in whose favor is the presumption of regularity attendant on his title of record. I can not admit the correctness of this theory.

In many cases parties entitled thereto have already come forward, and, on their application, received patents for the lands under the confirmation contained in said seventh section. These cases can not be affected by the legislation now proposed. The money lenders and trust companies, represented by capable attorneys who are ever on the alert to serve their clients, have already taken advantage of the law.

The only persons likely to be affected by the operation of this bill, should it be enacted, are the unsuspecting settlers and the quiet entrymen, and their transferees, who have waited in confident expectation that the provisions of the law would be applied for their benefit in regular course of business, without any discrimination against them as compared with the other class. The class of persons liable to be injuriously affected by the bill are those who, of all persons, are entitled to considerate treatment at the hands of the Government. As against persons holding under titles such as I have referred to, there is no equity in the mere contestant.

On a consideration of the whole subject, I am of the opinion that the bill should not pass.

The said bill is herewith returned.

Very respectfully,

THOS. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., March 24, 1892.

SIR: I have had the honor to receive by reference of the 18th of March, 1892, from the Hon. George Chandler, First Assistant Secretary, the draft of a bill entitled "A bill to amend section 7 of the act to repeal timber-culture laws, and for other purposes," submitted to the Department by the Hon. Thomas C. McRae, chairman of the Committee on the Public Lands of the House of Representatives, and referred to me as above for report in duplicate and return of papers.

The said draft reads as follows, viz:

"That there be added to section 7 of 'An act to repeal timber culture laws and for other purposes, approved March 3, 1891,' the following proviso:

"*Provided further*, That nothing in this section shall be construed to apply in its provisions to or affect any case when a contest was pending in the Land Department prior to the date of the passage of said act, or to in any manner impair rights which had been acquired under the homestead, preëmption, desert land, or timber culture laws prior to March 3, 1891."

The purpose of this draft of a bill appears to be similar to that of Senate bill No. 2180, with reference to which I reported under this date.

Accompanying the same as referred is a printed copy of House bill No. 2657, entitled "A bill declaring the construction of an act therein named," which is identical in terms with said Senate bill.

In reference to the subject-matter of both the draft referred to and House bill No. 2657, I inclose herewith a copy of my report on Senate bill No. 2180, which sufficiently expresses my views on the general subject, and the conclusion of which I think applicable to the said draft and bill from the House, which are herewith returned.

Very respectfully,

THOS. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

○

ISHAM T. OWEN.

MAY 26, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 2386.]

The Committee on War Claims, to whom was referred the bill (S. 2386) for the relief of Isham T. Owen, of Missouri, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Claims of the present Congress, a copy of which is hereto attached and made a part of this report.

Your committee concur in the conclusions stated in that report, and recommend the passage of the bill.

[Senate Report No. 464, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 2386) for the relief of Isham T. Owen, of Missouri, have duly considered the same and submit the following report:

The facts in this case are as follows:

Isham T. Owen, of Altona, Bates County, Mo., was a resident of the State of California in 1851, and during the Indian hostilities in that State, in that year, he volunteered in a military company, to wit, Company B, commanded by Lieut. J. F. Winfrey, constituting a part of the "Gila Colorado Expedition," against said hostile Indians, and served therein in the southern portion of that State.

Serving at the same time in the same company were two other volunteers, to wit, John Lott and Joseph B. McCulloch.

At the date of the termination of said Indian hostilities all of said volunteer troops so serving were given a certificate showing the amount due each for their military services, and for the use of horses so by them, respectively, furnished.

The two certificates so given to said Lott and to said McCulloch were bought by said Owen.

Upon the presentation and surrender by said Owen of said two certificates, together with his own certificate to William Foster, who had been duly appointed paymaster by the State of California, and who had been supplied with bonds to pay said troops for the purposes as aforesaid, said Owen received from said Foster two California Indian war bonds for \$1,000 each, issued April 9, 1851, under the act of the legislature of California, approved February 15, 1851, which bonds were numbered 107 and 108, respectively, and bore interest at the rate of 12 per cent per annum.

In the month of May, 1851, said Owen, for the purpose of returning to his former home in Missouri, took passage in the steamer *Commodore Stockton*, then engaged in carrying passengers traveling from California to New York, and running between San Francisco and Nicaragua; and when said steamer was in the harbor of Rialijo, Central America, said Owen lost overboard from said steamer his pocketbook, containing said two bonds; and that after using every means at his command, at the place and at the date of said loss, he failed to recover either of said two bonds.

From 1851 until the present time said Owen has continuously made diligent efforts to secure the payment of said two bonds, and now seeks payment from the United States of the principal and of the interest only earned by said bonds up to the date when the same were called in by the State of California, to wit, September 1, 1856, and not thereafter or otherwise.

By the terms of the act of the legislature of the State of California, approved February 15, 1851, under which they were issued, these two bonds were made payable in ten years, or at any period after five years from and after the date of their issue, at the pleasure of the State.

Congress, on August 4, 1854, modified by its act of August 18, 1856, made an appropriation with which to pay bonds of the class to which these two bonds belonged. Under this last act of Congress the State war-bond commissioners of the State of California, appointed under the act of the legislature thereof approved April 19, 1856, published a notice on September 1, 1856, calling in said bonds for redemption, and on which date interest on these bonds ceased to run.

The United States, under the acts recited in said bill, assumed the payment of said two bonds, which have never been paid, either by the State of California or by the United States.

Had these two bonds been in existence on September 1, 1856, then by the very terms of the act of Congress of August 18, 1856, before they could have been redeemed by the Secretary of War or paid by the Secretary of the Treasury, as therein provided, they had to be first presented to the State bond commissioners appointed by the legislature of California under its act approved April 19, 1856, and the amount due and payable upon each of said bonds had to be indorsed thereon by said commissioners, which total amount in the case of each bond would have been the principal thereof and interest earned thereon from the date of the issue thereof to the date named in their said notice or call, to wit, September 1, 1856.

Thereafter it was made the duty of the Secretary of War, under said act of Congress of August 18, 1856, upon the presentation to him of any of said bonds so indorsed, to draw his warrant for the amount so found due upon the Secretary of the Treasury, who was directed to pay the same. But as these two bonds were lost prior to September 1, 1856, and have never been found, it was impossible for said Owen to present either of them to said bond commissioners for any of the purposes recited in said act or in their said notice or call, and hence it was equally impossible for the Secretary of War to draw his warrant to redeem or for the Secretary of the Treasury to pay said bonds.

As this statute of Congress of August 18, 1856, could not be conformed to by said Owen in consequence of said loss of said bonds, he made application to the Secretary of the Treasury for the payment of his said claim, based on his ownership of said two bonds, and tendered to said Secretary an indemnifying bond in the sum of \$8,800 to indemnify the United States against any loss therein; but said Secretary returned to said Owen said indemnifying bond and all the papers by him submitted in evidence of his said claim, accompanied with a decision of the honorable Third Auditor of February 4, 1892, wherein it was declared that the Treasury Department was now without jurisdiction to entertain said claim without further legislation by Congress, and that the unexpended balance of the appropriation so made under the aforesaid acts of Congress had been carried to the "surplus fund" in the Treasury.

Your committee has official information from the Treasury Department showing that on February 24, 1892, said unexpended balance was \$8,362.16. Therefore said Owen was compelled to petition Congress for relief.

Your committee find that said Owen is entitled to payment of the principal of said two bonds, and interest earned thereon from April 9, 1851, the date of the issue thereof, to September 1, 1856, the date when interest thereon ceased; and that he should be paid the amount thereof whenever he or his heirs, administrators, or legal representatives shall file with the Secretary of the Treasury a bond satisfactory to said Secretary for the purpose of indemnifying the United States against all possible loss in any of these premises.

Your committee therefore report back the bill to the Senate and recommend its passage, with the following amendment:

Add at the end of the bill these words, to wit: "And after such payment the Secretary of the Treasury shall report his action in the premises to the governor of the State of California."

MARTHA E FLESSCHERT.

MAY 26, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SCOTT, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 3799.]

The Committee on War Claims, to whom was referred the bill (H. R. 3799) for the relief of Martha E. Flesschert, submit the following report:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fiftieth Congress, a copy of which is hereto attached as a part of this report.

Your committee concur in the conclusions stated in that report and recommend the passage of the bill.

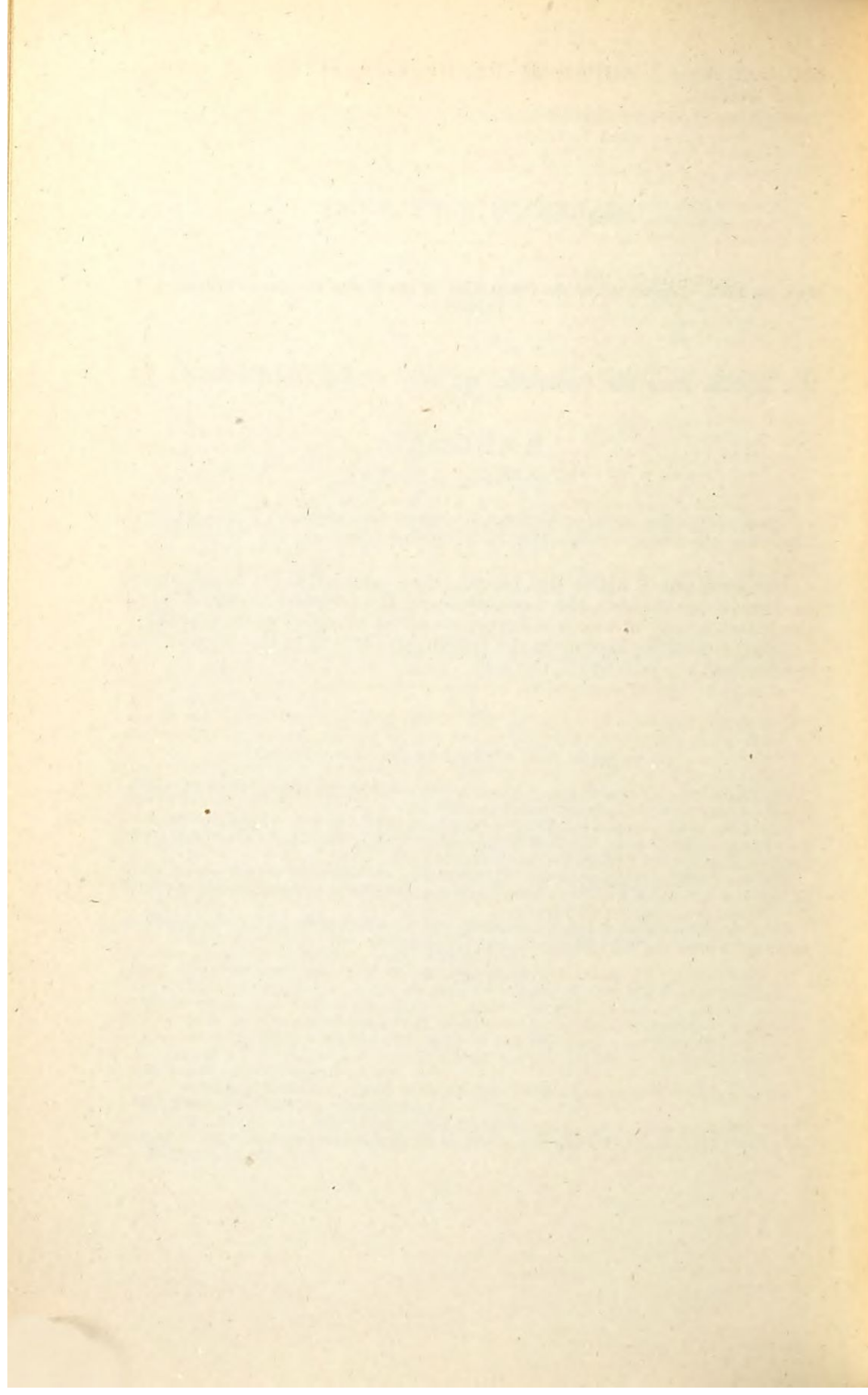
[House Report No. 3749, Fiftieth Congress, second session.]

The Committee on War Claims, to whom was referred the bill (H. R. 11660) for the relief of Martha E. Flesschert, report as follows:

The claim is for services rendered by Martha E. Flesschert as hospital matron for the One hundred and seventeenth Regiment of Illinois Volunteers from October 18, 1862, to March, 1864. Claim stated at \$212.50.

The proof filed in support of the bill shows that the claimant served continuously as hospital matron to the above-mentioned regiment for seventeen months, and that she has not been paid for said services.

Your committee are of opinion that the claimant should be paid for her services, and report back the bill and recommend its passage.



CAPT. GEORGE H. PERKINS, U. S. NAVY.

MAY 26, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DANIELL, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 8264.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 8264) for the relief of Capt. George H. Perkins, U. S. Navy, respectfully report:

Your committee, having examined into the merits of this case, find that the Senate report of this session fully sets out the facts, as this committee has ascertained upon its own investigation, and the Senate report, with its recommendation, we adopt as to the present bill. The said report is as follows:

[Senate Report No. 665, Fifty-second Congress, first session.]

The Committee on Naval Affairs, to whom was referred the bill (S. 2965) for the relief of Capt. George H. Perkins, have considered the same and recommend its passage.

It should be borne in mind that this bill does not propose any increase of pay for Capt. Perkins, it being expressly stipulated that his pay shall not be that of a commodore, but that which he is now receiving as a captain. It does provide, however, for his promotion to the rank of commodore without the corresponding pay, and your committee believes that by reason of his brilliant record and term of service it is but just to allow him such rank.

Capt. Perkins entered the naval service of the United States on October 1, 1851, and served actively and continuously for forty years, retiring on October 1, 1891, with the rank of captain. During this period his services were of the most brilliant character, as is evidenced by the following:

Extracts from testimony relating to the services of Capt. George H. Perkins, U. S. Navy, retired, performed in the battle below New Orleans in April, 1862, and the battle of Mobile Bay in August, 1864.

In the battle below New Orleans Lieut. George H. Perkins was the executive officer of the *Cayuga*, of which Capt. T. Bailey, second in command of the fleet, afterward Admiral Bailey, makes the following report:

* * * "On the 28th of April both the forts surrendered to Commander Porter. * * * Lieut. Commander N. B. Harrison was gallantly sustained by Lieut. George H. Perkins and Acting Master Thomas H. Morton. These officers have my unbounded admiration."

Commander N. B. Harrison, in his report to Capt. Bailey, commanding the leading division of the gunboats, says:

"It is needless for me to inform you—you had us under your own eyes—that all did their duty fearlessly and well; but I must commend to your special notice my executive officer, Lieut. George H. Perkins. The remarkable coolness and precision of this young officer while aiding me in steering the vessel through the barrier and past the forts under their long and heavy fire must have attracted your attention."

Lieut. Perkins was the officer who with Capt. Bailey was selected to make the landing on the levee at New Orleans with a flag of truce to demand the surrender of the city.

In the battle of Mobile Lieut. Commander Perkins was placed in command of the ironclad *Chickasaw*.

The following extract is from a review written for the Nation by Gen. J. C. Palfrey on Commodore Parker's account of the battle of Mobile Bay:

"Lieut. Commander Perkins, of the *Chickasaw*, had been ordered North, but asked for and obtained permission to wait until he had carried his monitor through the expected fight. Though one of the youngest officers in command of a ship, he had the sagacity to reflect that in a strange harbor, full of torpedoes, he would be safer alongside of the enemy's vessel, which for its own safety might he expected to keep clear of torpedoes. Consequently, he kept close under the stern of the *Tennessee* and would not be thrown off, and pounded away at close quarters with his 11-inch guns. He succeeded in jamming one of her ports and opening a breach for his shells to her interior, and to him Commodore Parker awards the praise of giving the vital wound which caused her surrender."

The New York Herald correspondent, under date of August 20, 1864, alluding to the surrender of the *Tennessee*, writes as follows:

"The final shots that terminated the career of the rebel vessel were fired by the monitor *Chickasaw*, which passed close under her stern, giving her the full weight of two 11-inch solid shot from her forward turret, which damaged the covering of the ram's stern ports.

"Buchanan went aft with his engineer to readjust the port cover. While engaged in this operation the *Chickasaw* brought her after turret to bear, one shot from which carried away the tiller chains of the *Tennessee*, rendering her unmanageable, while the other shot entered the damaged port, killing one man and fracturing Buchanan's leg."

From a "Chapter in History," published by Capt. James B. Eads in defense of his monitors, we copy the following closing sentence:

"The *Chickasaw* obtained a position under the stern of the rebel ram and poured in such a storm of 11-inch solid steel and cast-iron shot that the flag of the ram was finally hauled down to her.

"Throughout the fight the *Tennessee* found it impossible to get out of the raking fire in which she was held by this ironclad, in which position the latter delivered fifty-two 11-inch shot at her. Her commander, George H. Perkins, was handsomely complimented by Farragut."

The Concord (N. H.) Statesman commenting upon this paper, in an editorial, with excusable local pride, says:

"The battle of Mobile Bay was one of the great battles of the war, and no ship's commander engaged in it was entitled to half as much credit for gallantry and good judgment and persistency as Perkins. He captured the *Tennessee* and laid beside her modestly awaiting an officer of higher rank to come up in his ship and receive the surrender. By this the reader will infer, which is a fact, that Commander Perkins is as modest as he is brave. His record all through the war is of the very highest character."

Commodore Parker, in his account of the battle of Mobile Bay, writes:

"But the vessel that undoubtedly inflicted the most injury upon the ram was the monitor *Chickasaw*, commanded by Lieut. Commander Perkins, 'which hung,' said the pilot of the *Tennessee*, 'close under our stern. Move as we would, she was always there, firing the two 11-inch guns in her forward turret like pocket pistols, so that she soon had the plates flying in the air.'"

The following extract is taken from the report of Rear-Admiral D. G. Farragut of August 12, 1864:

"Our ironclads from their slow speed and bad steering had some difficulty in getting into and maintaining their position in line as we passed the forts, and in the subsequent encounter with the *Tennessee* from the same causes were not as effective as could have been desired; but I can not give too much praise to Lieut. Commander Perkins, who, though he had orders from the Department to return North, volunteered to take command of the *Chickasaw*, and did his duty nobly."

Such was the impression made by Perkins's services in this battle that Capt. James B. Eads, the builder of the *Chickasaw*, when he heard the results of the battle and the surpassing part of the *Chickasaw* in it, said: "I would walk 50 miles to shake hands with the young man who commanded her."

Said Capt. Johnson, who commanded the *Tennessee* (in the same vein): "If it had not been for that d—d black hulk hanging on our stern, we would have gotten on well enough. She did us more damage than all the rest of the Federal fleet."

Capt. Horace Herbert, Sixteenth New Hampshire Regiment, whose regiment was stationed at Pensacola, was present with Gen. Ashboth, who commanded at Pensacola, on board of the *Clyde*, which went out to witness the advance of the fleet. The next day, when the wounded were brought back, Admiral Buchanan, who was under obligations to Capt. Herbert for courtesies extended him, sent for him that he

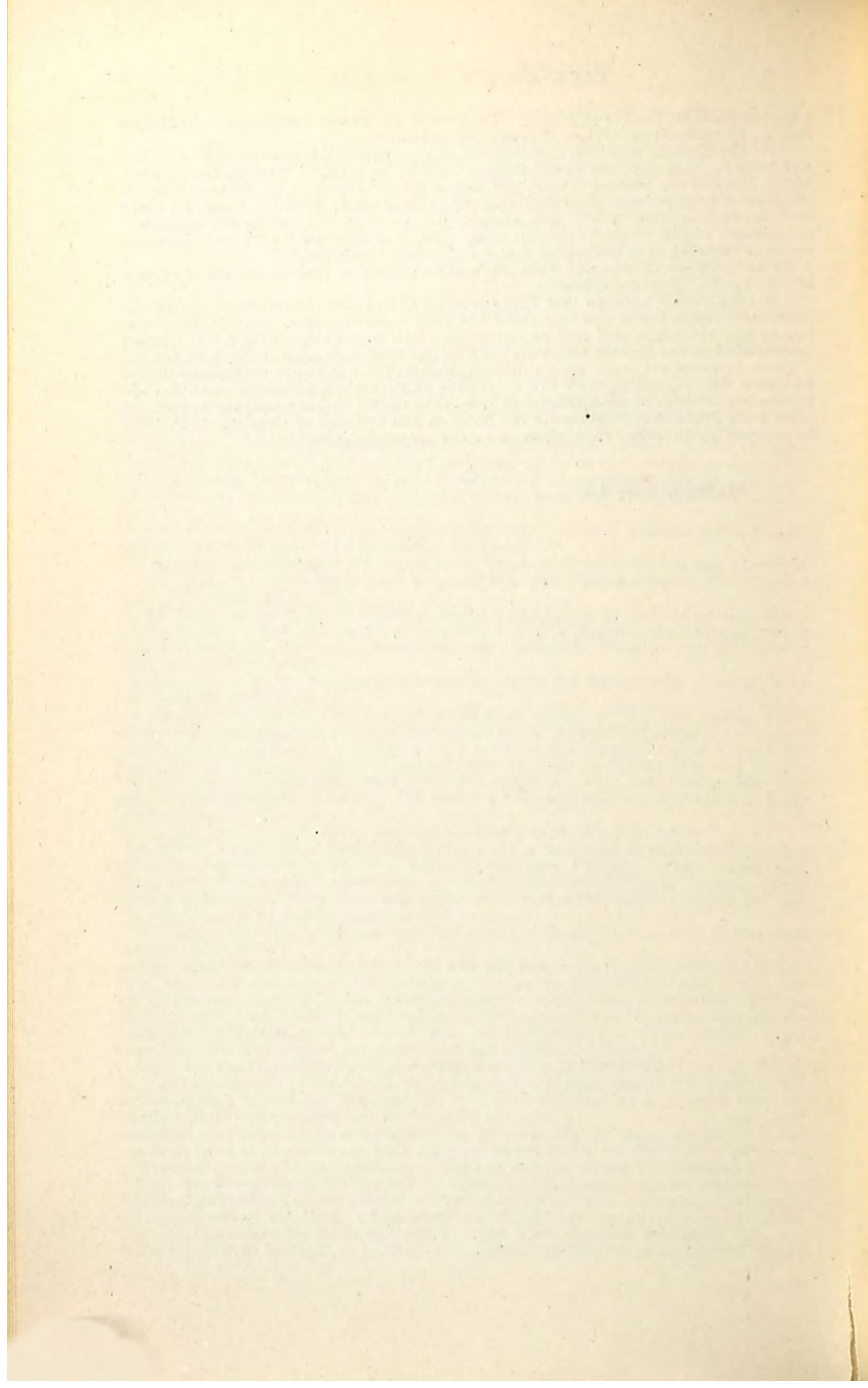
might express his thanks in person. To him he conversed freely about the Mobile fight. The following is Capt. Herbert's account of it.

"He [Buchanan] said the *Tennessee* would have defeated the entire fleet if it had not been for that monitor, which seemed to move by magic. It would turn around three times to the *Tennessee's* once and seemed to be everywhere. He said that the *Tennessee's* crew became exhausted replying to his attacks, while the *Chickasaw's* was as fresh as ever, and, in fact, they seemed like a very d——l, and to quote Admiral Buchanan's words, he said over and over again, how different would have been the result if he could have shaken off that d——d little *Chickasaw*."

As an evidence of Admiral Farragut's appreciation of Perkins we quote from a letter of a distinguished officer:

"Mr. McRitchie tells me that Farragut said to him less than a month before the Admiral's death, when talking about the Gulf squadron, that Capt. Perkins was young and handsome, and that no braver man ever trod a vessel's deck, and further commended in the highest terms his work in the *Chickasaw* against the *Tennessee*."

These extracts are made not in disparagement of the splendid services rendered by other officers, but to show the excellency of Perkin's achievements and the appreciation of them at that time, and from that period to his voluntary retirement after forty years' active service in the Navy on the first day of October, A. D. 1891, he enjoyed an unbroken reputation as a most accomplished officer.



LOUIS O. FARINGHY.

MAY 26, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 6961.]

The Committee on War Claims, to whom was referred the bill (H. R. 6961) for the relief of Louis O. Faringhy, report:

Faringhy served as an enlisted man in the U. S. Army in Company D, First Dragoons, and as hospital steward, U. S. Army, from August 19, 1852, to about October 1, 1863, when he was appointed second lieutenant Company L, First Cavalry, New Mexico Volunteers, and served in said Army as a commissioned officer till March 31, 1865, when he was mustered out with his regiment.

From October 1, 1863, to March 31, 1865, the following law was in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

He was paid for his services in the said interval of time from October 1, 1863, to March 31, 1865, merely what other officers of his grade were paid generally; and he was paid or allowed nothing whatever in this interval of time on account of his said prior length of service in the U. S. Army. For this reason it is alleged he was short-paid for his services rendered during the last said interval of time, entirely in the suppression of the late rebellion, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists or may exist to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price, thus put in controversy, of the one additional ration per diem for every five years of prior service computes to the sum of \$275, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is, that the claimant may go before a competent tribunal and prove the justness of his claim if he can.

The committee recommend that the bill do pass, with the following amendment:

Strike out "Faringhz" wherever it appears in the bill, and insert in lieu thereof "Faringhy."

The Committee on the subject of the proposed amendment to the Constitution of the State of New York, in relation to the right of suffrage, have the honor to report to the Senate and Assembly, in conformity with a resolution passed by the Senate on the 10th of January, 1846, and by the Assembly on the 15th of February, 1846.

REPORT

OF THE COMMITTEE ON THE SUBJECT OF THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE STATE OF NEW YORK, IN RELATION TO THE RIGHT OF SUFFRAGE.

ALBANY: PUBLISHED BY J. B. LEECH, 1846.

REPORT

The Committee on the subject of the proposed amendment to the Constitution of the State of New York, in relation to the right of suffrage, have the honor to report to the Senate and Assembly, in conformity with a resolution passed by the Senate on the 10th of January, 1846, and by the Assembly on the 15th of February, 1846.

The Committee have the honor to report that they have carefully considered the proposed amendment, and have concluded that it is not expedient to recommend its adoption.

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The Committee have the honor to report that they have carefully considered the proposed amendment, and have concluded that it is not expedient to recommend its adoption.

FANNY S. LIVERS.

MAY 26, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8893.]

The Committee on War Claims, to whom was referred the bill (H. R. 8893) for the relief of Fanny S. Livers, administratrix of John Livers, report:

John Livers served for several periods of time as an ordnance sergeant and in several other grades as an enlisted man and noncommissioned officer in the U. S. Army prior to November 17, 1862, when he was commissioned first lieutenant in the Third Pennsylvania Artillery Volunteers, U. S. Army, and thereafter he served in said Army almost continuously as a commissioned officer (volunteer or regular) till June, 1878. During the time he thus served as a commissioned officer the following provisions of law were, respectively, in force:

That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States. (5 Stat. L., sec. 15, p. 258, act of July 5, 1838.)

There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service. (Act of July 15, 1870, now section 1262 of the Revised Statutes.)

He was paid for his services in the said interval of time from November 17, 1862, to June, 1878, merely what other officers of his grade were paid, generally; and he was paid or allowed no increase of compensation whatever in this interval of time on account of his said prior length of service in the U. S. Army as an enlisted man. For this reason it is alleged he was short-paid for his services rendered as a commissioned officer during the interval from November 17, 1862, to June, 1878, partially in the suppression of the late rebellion, and the passage of this bill is requested, the sole object of which is to remove any statutable limitation bar that exists, or may exist, to prevent the Court of Claims from hearing and determining the demand in the premises as if it accrued within six years.

The commutation value or price, thus put in controversy, of the one additional ration per diem for every five years of prior service computes to about the alleged sum of \$3,000, and your committee, having fully considered the matter, can see no reason why the question involved should not be heard and determined, as is requested, in the Court of Claims.

Your committee would further observe that this bill nowise asks Congress to determine the justness of this claim (which is for a balance of wages for military services); it only asks Congress for what is frequently granted by it to the capitalist and property claimant, and that is that the claimant may go before a competent tribunal and prove the justness of her claim if she can.

The committee recommend that the bill do pass.



SIGNAL DISPLAY STATIONS ON MIDDLE AND THUNDER
BAY ISLANDS IN LAKE HURON.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BRICKNER, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT:

[To accompany H. R. 3947.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 3947) to establish signal display stations on Middle and Thunder Bay islands in Lake Huron, have had the same under consideration and report the same back with amendments and recommend that the bill as amended do pass.

Amend line 6 of the bill by inserting the words "Weather Bureau" in the place of "signal display;" also amend line 8 of the bill by inserting the words "Secretary of Agriculture" in the place of "Secretary of War."

In conjunction with this report is submitted a letter from Mark W. Harrington, chief of the Weather Bureau of the Department of Agriculture, approved by Hon. J. M. Rusk, Secretary of Agriculture, recommending the establishment of these stations and submitting estimates of their cost, in which it is stated that—

This bill is of the same general character as Senate bill No. 295, which appropriated \$12,700 for this purpose. The estimate for this bill (S. No. 295) was originally made by this office, but since that time a change in the tariff laws has nearly doubled the cost to the Government of telegraph cables. The Government can not import free of duty as formerly.

Notwithstanding the increased cost of establishing these stations as indicated by the estimates, the committee is of the opinion that they should be established, as the stations contemplated would undoubtedly be of great value to commerce.

U. S. DEPARTMENT OF AGRICULTURE,
WEATHER BUREAU,
Washington, D. C., February 8, 1892.

SIR: I have the honor to return herewith House bill No. 3947, appropriating \$15,000 to establish signal display stations on Middle and Thunder Bay islands in Lake Huron, which you transmitted to me for suggestion.

By an apparent inadvertence on the part of the gentleman who introduced the bill, it provides that the sum shall be expended under the direction of the Secretary of War, and characterizes the stations as "signal display" stations.

It is the evident intent of the bill that the stations shall be used for the same purposes as the stations now under the control of the Weather Bureau. I recommend, therefore, that the bill be so amended as to provide that the sum shall be expended

under the direction of the Secretary of Agriculture, and that the words "Weather Bureau" be substituted for the words "signal display."

The stations contemplated would be of great value to commerce, and the Weather Bureau would be glad to coöperate in the matter. This office has already had considerable correspondence in regard to these stations with Senator McMillan and others.

This bill is of the same general character as Senate bill No. 295, which I returned to you December 26, 1891, and which appropriated \$12,700 for this purpose. The estimate for this bill was originally made by this office, but since that time a change in the tariff laws has nearly doubled the cost to the Government of telegraph cables. The Government can not now import free of duty, as formerly. Instead of \$1,500 per mile, the estimates should be increased to—

7 miles cable, at \$3,000 per mile	\$21,000
22 miles land line, at \$100 per mile	2,200
Total	23,200

I am, very respectfully, your obedient servant,

MARK W. HARRINGTON,
Chief of Weather Bureau.

The SECRETARY OF AGRICULTURE.

DEPARTMENT OF AGRICULTURE,
February 11, 1892.

Respectfully referred to the Committee on Interstate and Foreign Commerce, House of Representatives. I approve the recommendation of Prof. M. W. Harrington.

J. M. RUSK,
Secretary.



PROMOTIONS IN THE MARINE CORPS.

MAY 27, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. MEYER, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 9022.]

The Committee on Naval Affairs, to which was referred the bill (H. R. 5078) to provide for the examination of certain officers of the Marine Corps, and to regulate promotions therein, have duly considered the same and submits the accompanying substitute for the said bill, with the recommendation that said substitute be passed.

The system of examination for promotion is now in successful operation in our Army and Navy. Without it, incompetency and unfitness in the higher grades of service can scarcely be guarded against.

Experience shows that such examinations are necessary to secure and maintain a high standard of excellence in the qualifications of officers.

The Secretary of the Navy, in a communication which accompanies this report, concurs in the provisions of the substitute bill and recommends its adoption by Congress.

NAVY DEPARTMENT,
Washington, May 9, 1892.

SIR: Referring to your communication inclosing, with a request for the views of this Department thereon, a copy of H. R. 5078, "to provide for the examination of certain officers of the Marine Corps, and to regulate promotions therein," I have the honor to state that said bill, having been referred to the Commandant of the Marine Corps for report and recommendation, was, under date of the 4th instant, returned to the Department by that officer with a report in which he refers to the provisions of the various acts of Congress and regulations placing the Marine Corps upon the footing as the Army with regard to rank, pay, allowances and retirement, and calls attention to the fact that H. R. 5078 provides for the application to the Marine Corps of the excellent and well defined system of examination for promotion of officers of the Army, established by the act of October 1, 1890.

The Commandant of the Marine Corps, however, in the report above mentioned, suggests that inasmuch as the act of October 1, 1890, is now in course of modification by Congress, it is desirable, in order to secure to the Marine Corps the benefits of future legislation upon the subject without the necessity of its separate enactment in the case of the Marine Corps, that a substitute for (H. R. 5078) be recommended, embracing the principles of that bill, but providing at the same time for the application to the Marine Corps of future legislation relating to the general subject.

Concurring in the suggestions of the Commandant of the Marine Corps, I have the honor to submit herewith, for your consideration, a draft of a proposed bill, embodying such suggestions, with the recommendation that the said draft be substituted for H. R. 5078.

A copy of the report of the Commandant of the Marine Corps, above referred to, is herewith inclosed for your information.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

HON. ADOLPH MEYER,
Committee on Naval Affairs, House of Representatives.

PENSACOLA TERMINAL COMPANY.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HERBERT, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 9023.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 4280) to grant the right of way to the Pensacola Terminal Company through the lands of the naval reservation near Pensacola, have had the same under consideration, and beg leave to report herewith a substitute for said bill.

The bill they recommend places the location of the road and the erection of wharves and fixtures by the railroad company entirely under the supervision and subject to the control of the Secretary of the Navy, who is also given power, in case he may deem it necessary, to cause to be removed any structures that may be erected on said right of way.

The said company, it is also provided, shall not use more than 200 feet of water front, and this privilege for the use of land 200 feet in width is not to extend farther back than 500 feet.

Your committee believe that the interests of the Government and of the public are well and sufficiently guarded by the provisions of the bill, and they recommend its passage.

Your committee further recommend that H. R. 4280, which they report back herewith, do lie upon the table.

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ENLISTED MEN IN THE NAVY.

MAY 27, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. HERBERT, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 5753.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 5753) to amend section 1417, Revised Statutes, in relation to the number of enlisted men in the Navy, beg leave to report the same back to the House with the recommendation that the same do pass.

Your committee append hereto as part of this report, giving reasons therefor, the following letter from the honorable Secretary of the Navy:

NAVY DEPARTMENT,
Washington, April 7, 1892.

SIR: In reply to your verbal inquiry as to the increase in cost which would result should the bill (H. R. 5753) to amend section 1417 Revised Statutes become a law, I have the honor to inform you that the addition to the enlisted force of the Navy therein provided would require an increase, including pay and bounty, of \$168,750 in the estimates. The total number of men, including apprentices, now in the service, is 8,188, the limit allowed by law being 8,250.

The demands made upon the naval force of the United States have greatly increased in recent years, especially in the Pacific. The necessities arising in these waters compel the Department to keep in service of the most active kind, a thoroughly efficient cruising force, and the number of vessels at other points has been correspondingly reduced. Several of the new ships are, however, now approaching completion which will help to supply the deficiency. Among those which will be ready during the next year may be mentioned the *New York*, *Detroit*, *Montgomery*, *Marblehead*, Gunboats 5 and 6, *Raleigh*, *Monterey*, the practice cruiser, and the ram.

The complement of these ships amounts to 1,900 men. At the present time the force of enlisted men is within 62 of the limit fixed by law. There are available barely enough to furnish a crew for the *Ranger*, which is to be commissioned in the latter part of the current month at Mare Island, but not a sufficient number to man the sailing ship *Constellation* which must be commissioned May 15 for the summer practice cruise of the naval cadets.

The increase provided for by the pending bill in the force of naval apprentices will help to remedy the condition of affairs above described, and the additions thus made, composed wholly of young men of American nationality, will strengthen the best element of which the enlisted force can be composed, and promote in a high degree the efficiency of the naval establishment.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Hon. H. A. HERBERT,
Chairman Naval Committee, House of Representatives.

PUBLIC BUILDING AT ELGIN, ILL.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. NEWBERRY, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany H. R. 612.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 612) providing for the erection of a public building at Elgin, Ill., have had the same under consideration and make the following report:

In line 12 strike out the words "one hundred" and insert "seventy-five," and in line 20 strike out the words "one hundred" and insert in lieu thereof the words "seventy-five."

Elgin is a city of about 20,000 inhabitants. It has nearly trebled its population since 1880, and is rapidly growing both in wealth and population. Large manufacturing industries are located there, and many have been established within the past twelve months which will add many thousands to the present population. The Elgin Watch Factory is located there—the largest watch factory in the world—and has on its pay rolls over 3,000 employes.

There are also large boot and shoe manufactories there, besides many other productive industries, employing a large number of mechanics and laborers. The Cook Publishing Company is also located in that city, which largely increases the receipts of the post-office at that place. If a Government building is to be constructed in that city, it would seem advisable to secure a site at as early a date as practicable. The necessity for the building seems to be clear.

The post-office business there during the last year amounted to \$38,308.71. The expenses of the office were only \$15,850.70, leaving a net revenue to the Government at that office of \$22,457.95. The net revenue to the Government will increase year by year.

The building in which the office is now conducted can not long be used for the purpose to which it is now put, and wise economy would require that the Government should select a site at as early a day as practicable and construct a post-office building in which to transact this large and increasing postal business.

Your committee therefore report back the bill favorably, with the amendments above indicated.

PUBLIC BUILDING IN CAMDEN, N. J.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WARNER, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany H. R. 274.]

The Committee on Public Buildings and Grounds, to whom was referred House bill 274, respectfully report:

The question in this case is not whether a building shall be constructed, but only as to whether the building to be constructed is adequate to the necessities of the Federal business in Camden, N. J. A building was authorized by act approved January 26, 1887, and the expense thereof thereby limited to \$100,000. This amount was appropriated for the purpose, but it has been found entirely inadequate.

The site has been purchased and plans and specifications for the building made and bids for its construction sought by advertisements. About \$34,000 of the moneys appropriated have been thus expended, and the bids for the construction of the building in all cases exceeded the available balance.

Camden is a city of 65,000 inhabitants, with a suburban population of 20,000. The population of the city in 1880 was 41,659, and in 1890, 58,313. It is rapidly growing. Its industries have kept pace with the increase of population, and are thought to have \$15,000,000 invested in manufactories and pay annually in wages \$9,000,000; it has nineteen public schools, five banks, and thirteen charitable institutions.

The postal business in 1891 involved gross receipts of \$53,555, and net receipts above expenditures of \$18,869, and these figures are rapidly increasing.

A plain building of limited size, fireproof, upon site purchased, can not be provided for less than the amount named below. No immediate appropriation is necessary as the amount already appropriated will carry on the work for a year at least.

In view of the facts stated the committee recommend that the limit of cost be increased \$60,000, and that the bill do pass.

PUBLIC BUILDING AT JAMESTOWN, N. Y.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WARNER, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany H. R. 4420.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4420) for the erection of a public building at Jamestown, N. Y., have had the same under consideration and submit the following report:

Jamestown is a rapidly growing city of above 18,000 inhabitants, the center of the great dairy region of southwestern New York, the leading city of Chautauqua County, a great and growing center of wool and furniture manufactures, and close to the rapidly developing grape region of that section.

The postal receipts are not merely very large in proportion to the population, but are increasing at an extraordinary rate. During the year ending June 30, 1891, they were \$32,427, as compared with \$17,333 ten years previous, and are now at a current rate of about \$36,000 per year. The net income is still more extraordinary for a town of this size, being nearly \$19,000 for the year ending June 30, 1891, or nearly 60 per cent of the gross receipts. Jamestown is also a distributing point for postal business, and an important substation of the internal-revenue district in which it is situated.

The extent of the Federal business of this place justifies, and its convenient transaction requires, the erection of a public building. The committee believe that a suitable site can be secured and a proper building erected at Jamestown at a total expense of not to exceed \$75,000.

Your committee therefore recommend that the bill in question be amended by substituting the words "seventy-five" instead of "one hundred and twenty-five," in lines 12 and 13; by striking out the appropriation clause in lines 13, 14, 15, 16, and 17, and by striking out lines 40 to 68, inclusive; and that, so amended, the bill do pass.

PUBLIC BUILDING AT POTTSVILLE, PA.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WARNER, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany H. R. 2739.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 2739) for the erection of a public building at Pottsville, Pa., having had the same under consideration, submit the following report:

A similar bill was introduced in the Fiftieth Congress, and favorably reported by the Committee on Public Buildings and Grounds. The population of Pottsville is about 16,000, to which is to be added the boroughs of Yorkville, Mount Carbon, and Palo Alto, contiguous to it and included in the delivery from the Pottsville post-office, which with the other settlements surrounding the town, all accommodated with postal facilities at the same office, altogether make a population of 20,000. The town is prosperous and growing. The gross receipts of the post-office for the year 1891 were \$19,098.56, and the net revenue was \$6,712.54. The money-order business, both domestic and international, is extensive, aggregating for the last fiscal year, \$100,259.59.

Pottsville is, besides, a distributing center, five railroads having terminals there, and nearly one hundred passenger trains moving in and out of the town daily. The registered letters during 1891 numbered 19,931.

The Government is also at present obliged to rent rooms for its internal-revenue business at Pottsville, which is considerable and fast increasing.

The extent of the public business at this place justifies, and the public convenience requires a public building.

The committee believes that a suitable site can be secured and a building erected thereon such as will accommodate for many years to come all Federal business at Pottsville at a total expense not to exceed \$50,000.

Your committee therefore recommend that the bill in question be amended by substituting "fifty" instead of "one hundred" in line 14, by striking out the appropriation clause in lines 14, 15, 16, and 17, and by striking out all of the bill including and following the word "so" in line 38; and that, so amended, the bill do pass.

PENSIONS TO NONRESIDENTS.

MAY 27, 1892.—Laid on the table and ordered to be printed.

Mr. HARRIES, from the Committee on Invalid Pensions, submitted the following

A D V E R S E R E P O R T :

[To accompany H. R. 3935.]

The Committee on Invalid Pensions have considered the bill (H. R. 3935) relating to pensions granted to persons who are foreigners or not bona fide residents of the United States, and submit the following report:

The object of this bill is to eliminate from the pension rolls the names of all persons who are not citizens and bona fide residents of the United States.

The passage of such a measure would, in the opinion of your committee, work an injustice to a worthy class of persons who, by reason of services rendered and disabilities incurred by themselves or near relatives, in the military or naval service of the United States in its time of need, have become entitled under existing laws to the recognition of this Government, but who because of the reduced expenses of living, or for any other reason, have seen fit to take up their residence abroad. Such residence abroad, for whatever reason, even though permanent, is not, in the opinion of this committee, sufficient to justify the withdrawal of the pension which has been granted, and your committee therefore recommend that the bill do lie on the table.



CERTAIN CLAIMS FOR STORES AND SUPPLIES.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 9024.]

The Committee on War Claims, to whom was referred the bill (H. R. 8739) for the allowance of certain claims for stores and supplies, etc., respectfully report as follows:

The Committee on War Claims, having classified all claims for quartermaster stores and supplies furnished for the use of the United States Army during the late war and reported from the Court of Claims with favorable findings, has embraced all such claims in the accompanying bill, and reports the same with the recommendation that it pass.

The cases referred to the Court of Claims were claims arising under the act of July 4, 1864, for supplies furnished the Army and Navy of the United States, and for stores and supplies taken by said armies for their subsistence while in the field, of which a commission, known as the Claims Commission, organized by the act of March 3, 1871, had jurisdiction, which claims had been rejected by the Quartermaster and Commissary Generals, and by said Claims Commission generally upon the ground that the claimants had failed to establish their adherence to the United States throughout the war or that they had given no aid or no comfort to the rebellion. Many of the claims thus rejected had been heard upon *ex parte* testimony, and many on the private reports of special agents, which the claimants had been allowed no opportunity to rebut. Much dissatisfaction was created by many of these decisions, the claimants feeling that they had not been justly dealt with; and the consequence was that appeals for relief were constantly made to Congress, many of the parties claiming to have been loyal to the United States throughout the war and that they were entitled to compensation for their property taken for and used by the Federal military authorities.

To provide for cases of this character, and afford the claimants the opportunity to have a fair and impartial adjudication of their claims, Congress enacted the act entitled "An act to afford relief and assistance to Congress," etc. (known as the Bowman act), the first section of which provided that—

Whenever a claim or matter is pending before any committee of the Senate or House of Representatives, or before either House of Congress, which involves the investigation and determination of facts, the committee or the House may cause the same, with the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall there be proceeded in under such rules as the court may adopt. When the facts shall have been found, the court shall not enter judgment thereon, but shall report the same to the committee or to the House by which the case was transmitted for its consideration.

And the fourth section of this act provides as follows:

SEC. 4. In any case of a claim for supplies or stores taken by or furnished to any part of military or naval forces of the United States, for their use during the late war for the suppression of the rebellion, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the Government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same was taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall without further proceedings be dismissed.

Under these provisions of the statute a large number of cases that were rejected by the Quartermaster or Commissary generals, or the Claims Commission, have been and are being transmitted to the Court of Claims on the petitions or applications of the claimants; and that court, as required by the act, has adopted rules regulating the proceedings in such cases. These rules provide that the preliminary inquiry in regard to the loyalty of the claimants, as required by section 4 of the statutes, shall be first determined, thus settling the jurisdictional fact, before the merits of the cause is investigated; upon this inquiry, the testimony used upon former hearings is not deemed sufficient, the court holding, as we understand, that it is not acting as an appellate tribunal to review the action of the Claims Commission, or the Quartermaster or Commissary generals. But the cases are tried on all the questions involved, *de novo*, upon the former testimony and such additional evidence, regularly taken by depositions, or certified by the Departments, as required by law. Proceedings are then had as in other cases in that court. Oral arguments are made, briefs filed, and then they are taken under consideration by the court.

If the court finds the jurisdictional fact in favor of the claimant, in other words that he was loyal to the Government of the United States throughout the war, then the case proceeds to a hearing on the merits, and the whole case is fully considered, and the court awards to claimant such sum for the stores and supplies furnished as the testimony shows he is entitled to. If the court finds that the claimant was not so loyal, then the case is dismissed. It thus appears that in the trial of these cases no *ex parte* testimony is admitted; the cases are tried strictly in accordance with judicial methods; both of the parties to the contest have been fully heard in open court; and the determination of the court, as set forth in its findings of fact, is the result of a full judicial inquiry. These facts, thus found, are then transmitted to the proper committee or the House, and thus the object of the fourth section of the Bowman act has been attained.

The question then presents itself, to what extent are the findings of fact of the Court of Claims in cases thus transmitted to it by a committee or by the House itself binding upon Congress? In requiring the court to report its findings of fact in each case to Congress or to a committee, which amounts to the same thing, Congress appears to have adopted the practice of the Supreme Court in relation to appeals from the Court of Claims.

Those rules require the inferior court to find the ultimate facts in each case; and in the Tessmer case (93 U. S., 65) that court held that the findings of the lower court "furnished the facts we are to consider, and we can not look beyond them; for the purposes of this case they import absolute verity and conclude both parties." And this doctrine has been consistently adhered to the other cases. (See *Carver v. The*

United States, 11 U. S., 609.) Waiving the question of abstract right, why should not this principle be applied by Congress to cases arising under the fourth section of the Bowman act?

The committee has carefully compared the said bill with the record of the cases and find errors therein; they therefore report the accompanying bill as a substitute therefor and recommend its passage.

The committee recommend that the original bill lie on the table.



LOAN OF CERTAIN ARTICLES FOR THE WORLD'S CO-
LUMBIAN EXPOSITION.

MAY 27, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. HOUK, of Ohio, from the Select Committee on the Columbian Expo-
sition, submitted the following

REPORT:

[To accompany H. Res. 102.]

The Select Committee on the Columbian Exposition, to which was referred the joint resolution (H. Res. 102) requesting the loan of certain articles for the World's Columbian Exposition, make the following report:

In line 13 after the word "exhibition" insert the words "safe custody."

In line 13 after the word "return" insert the word "and."

In line 14 strike out the words "be authorized" and insert in place thereof the words "have authority."

Strike out all of the resolution after the word "transportation" in line 15.

The committee recommend that the joint resolution amended as above do pass.



CERTAIN ARTICLES FROM THE SMITHSONIAN INSTITUTION
TO THE WORLD'S COLUMBIAN EXPOSITION.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of
the Union and ordered to be printed.

Mr. REILLY, from the Select Committee on the Columbian Exposition,
submitted the following

REPORT:

[To accompany H. Res. 106.]

The Select Committee on the Columbian Exposition, to whom was referred the joint resolution (H. Res. 106) to authorize the Secretary of the Smithsonian Institution to send articles illustrative of the life and development of the industries of women to the World's Columbian Exposition, report in favor of the passage of the resolution.

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CERTAIN MODELS, DRAWINGS, ETC., TO THE WORLD'S
COLUMBIAN EXPOSITION.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of
the Union and ordered to be printed.

Mr. REILLY, from the Select Committee on the Columbian Exposition,
submitted the following

REPORT:

[To accompany H. Res. 105.]

The Select Committee on the Columbian Exposition, to whom was referred the joint resolution (H. Res. 105) to authorize the Secretary of the Interior to prepare and send to the World's Columbian Exposition models, drawings, etc., prepared or invented by women, report in favor of the passage of the resolution.



INVITATION TO THE KING AND QUEEN OF SPAIN TO PARTICIPATE IN THE WORLD'S COLUMBIAN EXPOSITION.

MAY 27, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. LITTLE, from the Select Committee on the Columbian Exposition, submitted the following

REPORT:

[To accompany S. R. 42.]

The Select Committee on the Columbian Exposition, to whom was referred the joint resolution (S. R. 42) extending an invitation to the King and Queen of Spain and the descendants of Columbus to participate in the World's Columbian Exposition, recommend that it do pass.



INVITATIONS TO PRESIDENTS OF AMERICAN REPUBLICS
AND GOVERNORS OF AMERICAN COLONIES TO ATTEND
WORLD'S FAIR.

MAY 27, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. LITTLE, from the Select Committee on the Columbian Exposition,
submitted the following

REPORT:

[To accompany S. Res. 41.]

The Select Committee on the Columbian Exposition, to whom was referred Senate joint resolution 41, recommend that it do pass with the following amendments, viz:

In line 8, after the word "Exposition," strike out the words "on the eleventh, twelfth, and thirteenth of."

In line 8, after the word "Exposition," insert the word "in."



THE HOUSE OF REPRESENTATIVES
IN SENATE AND HOUSE
JANUARY 1877

REPORT
OF THE
COMMISSIONERS OF THE
LAND OFFICE

IN RESPONSE TO A RESOLUTION
PASSED BY THE HOUSE OF REPRESENTATIVES
JANUARY 1877

THE HOUSE OF REPRESENTATIVES
IN SENATE AND HOUSE
JANUARY 1877

REPORT

The following report of the
Commissioners of the Land Office
in response to a resolution
passed by the House of Representatives
January 1877

SAMUEL M. CAMPBELL.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany S. 2593.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 2593) granting an increase of pension to Samuel M. Campbell, have had the same under consideration and now submit the following report:

This act passed the Senate April 22, 1892. All the facts in the case are set out in the Senate report, which is as follows, to wit:

The soldier enlisted as a private in the Seventh Indiana Regiment on the 4th day of September, 1861. He served until December 31, 1862, when he was discharged for disability incurred in the service, as shown by his discharge. He reënlisted as a private in the Second Battery Indiana Light Artillery, and served until July 3, 1865, when he was again honorably discharged. He is now a pensioner at the rate of \$17 per month, and his claim for increase has been rejected by the Pension Bureau on the ground that he is now receiving the highest rate that can be technically allowed him for his disability.

The soldier is 47 years old, and it appears from the evidence that his wife is an invalid unable to work; that neither have any property; there are no children; the two are dependent upon the husband's pension for subsistence. The soldier is unable to do any kind of manual labor.

It appears from the testimony of his comrades on file, and also from that of physicians, that he is now suffering from varicocoele of the left side; also, that he has fistula of the rectum, one opening high up, from which there is a constant discharge. He has a rapid heart, which beats ninety to the minute; is partially blind in the left eye. He has a bronchial affection, an emaciated and haggard appearance. He is described as a physical wreck, and as suffering from total disability.

Under the circumstances the committee think there ought to be an increase of the pension in this case to the rate of \$30 per month, and therefore report a bill for his relief and recommend its passage.

On further examination the Committee on Invalid Pensions find that an examination by the medical board at Indianapolis, October 2^d, 1890, was made showing his height to be 6 feet and his weight 150 pounds. The board rated him at four-eighteenths for varicocoele of left side, two-eighteenths for varicocoele of right side, six-eighteenths for disease of cords, seventeen-eighteenths for disease of rectum and piles.

An examination made by the board at Noblesville, Ind., September 9, 1891, shows his weight to be 138 pounds. His physical condition is stated to be as follows:

Nutrition very poor; tongue, red, fissured, and pointed; throat highly congested; chest at rest, 34½ inches; suspension, 35½; expulsion, 33½; left chest wall, 18 inches; apex beat of heart 2 inches to right and 2 below left nipple; action very irregular, and intermitting, and weak, nervous, with mitral deficiency; dry crepitation in apex both lungs, with slight cavernous sounds in apex left lung, and bronchial rale

in center of chest; there are 4 external piles inflamed; can not use speculum on account canal fissure; no varicocoele at present in either cord or testicle, but there is atrophy of both testicles with thickening of cords: stomach very much disturbed and very tender upon pressure. Claimant is in such condition that he has no assurance of living six months, and we believe him to be wholly unable to perform manual labor, and recommend that he be placed on second grade, or \$30 per month.

The committee, believing this to be a meritorious case, submit a favorable report and recommend the passage of the bill.



JOHN CHAMBERLAIN.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MCKINNEY, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany S. 371.]

The Committee on Invalid Pensions have considered the bill (S. 371) granting a pension to John Chamberlain and submit the following report:

The petitioner, as appears from evidence, is a minister who was commissioned by the governor of New Hampshire as an agent to care for the sick and wounded of the Army of the Potomac. It is shown that he acted as chaplain, nurse, physician, and even as a soldier on several occasions. That he did his duty nobly and well there is no doubt.

It is in evidence that claimant spent more of his own money for the relief of sick and wounded soldiers than he received by way of compensation, and that, among other things, he enlisted a large number of recruits. Affidavits show that on several occasions he took the guns from the hands of wounded men and did a soldier's duty. Other affidavits show the value of the services that claimant rendered the Government. He is now about 70 years of age, broken in health, and destitute of means.

While the applicant was not regularly enlisted, and therefore does not come under the pension laws, we believe his services were such that he should be pensioned.

Your committee therefore make a favorable report and recommend that the bill do pass.

JOHN CHAMBERLAIN

Star 27, 1871. Submitted to the Committee of the Whole House and ordered to be printed.

Mr. McKIMNEY, from the Committee on Invalid Pensions, submitted the following

REPORT

ITS ASSUMPTIONS & ETC.

The Committee on Invalid Pensions have transmitted the bill (H. R. 1011) granting a pension to John Chamberlain and submit the following report:

The petitioner, as appears from evidence, is a minister who was commissioned by the Governor of New Hampshire as an agent to care for the sick and wounded of the Army of the Potomac. It is shown that he acted as chaplain, nurse, physician, and even as a soldier on several occasions. That he did his duty nobly and well there is no doubt.

It is to be noted that Chamberlain spent more of his own money for the relief of sick and wounded soldiers than he received by way of compensation, and that, among other things, he enlisted a large number of recruits. Although it is shown that on several occasions he took the guns from the hands of wounded men and did a soldier's duty. Other witnesses show the value of the services that Chamberlain rendered the Government. He is now about 70 years of age, infirm in health, and destitute of means.

While the applicant was not regularly enlisted and therefore does not come under the pension laws as before his services were such that he should be pensioned.

Your committee therefore make a favorable report and recommend that the bill do pass.

CHARLES B. STEWARD.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PATTON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 6982.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 6982) for the removal of the charge of desertion from the name of Charles B. Steward, have had the same under consideration and submit the following facts and recommendations:

From the records of the War Department it appears that Charles B. Steward, under the name of Edwin S. Button, was enrolled in Company H, Seventeenth New York Volunteers, on May 3, 1861, to serve two years; that he served faithfully until June 2, 1863, when he was mustered out of service with his command by reason of expiration of term of enlistment; that he again enlisted December 30, 1863, under same name, in Company M, in the Fifth New York Heavy Artillery, to serve three years; that he served faithfully until November 10, 1864, when he is reported to have deserted.

From evidence submitted it appears that on October 20, 1864, the soldier being sick, was furloughed for thirty days, and that he went to his home, where his health failed to improve, and being under the care and treatment of his family physician, he requested said physician, who is now dead, to report his condition to his officers, which he thought was done. But subsequent facts fail to show that this report was ever made, and after the expiration of said furlough he was marked as a deserter.

The soldier not recovering his health sufficiently to return to service, and not wishing to go to a hospital, remained at home ignorant of the charge that had been entered against him until his command was mustered out of service July 19, 1865.

These facts being fully proven by numerous affidavits of persons who were intimately acquainted with the circumstances covering the entire period of absence of the soldier, verified by his own sworn statement, the soldier's faithful service extending over a period of three years, with the facts and evidence herewith submitted, we recommend the following amendment to the bill: "*Provided*, That no pay or allowances become due by virtue of this act," and when so amended it do pass.

[General Headquarters, State of New York, Adjutant-General's Office.]

BUREAU OF RECORDS OF THE WAR OF THE REBELLION,
Albany, June 15, 1891.

The records of this office show that one Edwin S. Button, a private of Company H, 17 Regiment of Infantry New York Volunteers, enlisted on the 24 day of May, 1861,

to serve for the period of 2 years; that he was mustered in the service of the United States on the 24 day of May, 1861, and that he was honorably discharged and mustered out from that service on the 2d day of June, 1863, with company.

By the direction of the adjutant-general of the State.

FRED. PHISTERER,
Colonel and Chief of the Bureau.



WILLIAM BOND & CO. ET AL.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BULLOCK, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 236.]

The Committee on Claims, to whom was referred the bills (S. 236, H. R. 2486) for the relief of William Bond & Co. *et al.*, respectfully report that they have carefully considered the same and recommend that H. R. 2486 lie on the table and that S. 236 do pass.

WARREN W. WILKINSON.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWERS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 7909.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 7909) directing the Secretary of War to issue an honorable discharge to Warren W. Wilkinson, have had the same under consideration, and report:

The military record shows that said Warren W. Wilkinson enlisted November 25, 1862, to serve for the term of the regiment; served faithfully until February 26, 1864, a period of one year and three months; was honorably discharged, and reënlisted the same day in the same company for three years; that he served faithfully until November 3, 1865, a period of one year and nine months, giving a service of three years; that he deserted at St. Louis, November 3, 1865, six months after the war closed.

Upon his first discharge was written by his commanding officer the words "a good soldier." From his own statement it appears that he was in thirty-one battles and skirmishes during the war, including Gettysburg, Manassas Gap, Coal Harbor, Wilderness, Spottsylvania Court House, second battle of Bull Run, Perryville, and Winchester. The statement of this applicant is herewith made a part of this report and explains the reason for his absence.

In view of all the facts, and that this soldier served faithfully for three years and until after the war closed, the committee recommend that the bill be amended by adding the following words: "*Provided*, That no pay, bounty, or emoluments shall become due by virtue of the passage of this act," and as so amended the bill do pass.

WAR DEPARTMENT,
Washington City, May 26, 1892.

SIR: In reply to your letter of the 23d instant, received yesterday, in which you request to be informed whether Warren W. Wilkinson, late of Troop A, Second Cavalry, had prior service in the Sixth Michigan Battery, I am directed by the Secretary of War to inform you that the name given has not been found on the rolls of the organization in question.

The records however show that Warren W. Wilkinson, of Company G, (Seventh Battery) First Regiment, Michigan Light Artillery was enrolled February 17, 1862, and was discharged to date November 24, 1862, for the purpose of enlisting in Troop A, Second United States Cavalry, in accordance with General Orders No. 154, A. G. O., of 1862.

Very respectfully,

F. C. AINSWORTH,
Major and Surgeon, U. S. Army.

Hon. W. W. BOWERS,
Committee on Military Affairs, House of Representatives.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, December 29, 1890.

SIR: I have the honor to transmit herewith bill (H. R. 12429) directing the issue of an honorable-discharge certificate to Warren W. Wilkinson, Troop A, Second United States Cavalry, and in compliance with the request of the chairman of Committee on Military Affairs, House of Representatives, to report that the records of this office show that Warren W. Wilkinson was enlisted November 25, 1862, assigned to Troop A, Second Cavalry, and discharged February 26, 1864, by reason of reenlistment, a corporal. He reenlisted in same troop February 26, 1864, for three years; deserted November 3, 1865, at St. Louis, Mo., while first sergeant, and is still a deserter at large.

The Department has no power to remove the charge of desertion in this case under existing laws.

Very respectfully,

J. C. KELTON,
Adjutant-General.

The SECRETARY OF WAR.

Hon. JAMES O'DONNELL,
Washington, D. C.:

SIR: I enlisted in the 6th Mich. Battery in Feb., 1862. Being under age, ran away from home, as my parents objected to my enlisting. In Nov. 25, '62, I was transferred to Troop A, 2nd U. S. Cavalry for balance of time. I reenlisted Feb. 26, '64, for 3 years, and stand charged with desertion since Nov. 3, '65. There is a history in connection with these charges which I will give as accurately and briefly as possible. While at St. Louis on board of vessels (our regt. was bound for some point in the west) I was sent by Capt. Sokalski out into the city. Having done my business, being in a strange city to me, I took a roundabout way back to the river, wishing to see as much of the city as possible. Thinking there was plenty of time, I spent between two and three hours on the trip. (I wish to say that I am, and was at that time, strictly temperate in every respect, never partaking of the mildest stimulants.) When I arrived at the river I found the vessels were gone and the officers had left no word for me as to their destination. My officers were very kind to me always, and I think they believed me on board the vessel. I liked my officers and was proud of the position I held in my company and regt. I was acting as sergt. major of my regt. at this time and first sergeant of Company A. Capt. Sokalski had not told me that there was any necessity for haste when I left the vessel, or I should have been back. I was very much put out at the position that I found myself placed in. The next morning, not being able to learn anything as to the destination of my regt., I decided to make a visit to my parents residing in California, Branch Co., Mich., and write the War Dept. for information as to the whereabouts of my regiment, and then rejoin it at once. This arrangement my mother would not listen to a moment. I had spent nearly 4 years in the service of my country, the war over, and they urged that I must stay with them. They were getting old, I was their main support. It was plain that duty called me from two directions. Oh, it is hard to resist the pleadings of a fond and loving mother. I did not think at that time that my country needed me, and I consented to stay and make their declining years as happy as possible. Nine years ago I buried my father at a ripe old age. Last August I buried my mother. I have had the satisfaction of knowing that the declining days of my parents were comfortable. Now, if I could have this terrible disgrace removed I should be very grateful. The volunteer I think has been relieved. My offense is in error of judgment when duty called from different directions. My mother did not think of this disgrace or her judgment would have been different. She could only see the service that I had already rendered my country—3 years and 10 months; was in 33 engagements, and now I have suffered for 25 years with this terrible stain on my name. Oh! my country, I am punished enough, I cry for mercy; for the sake of the four years I served you so faithfully, forgive me this one great fault.

Within two years after entering the regular service I was made 1st sergt. of Troop A. This is a position that only good, worthy soldiers can attain to in the regular service. I inclose my discharge for reenlistment, which simply shows, in the handwriting of Lieut. Lawless, that I was "a good soldier."

Very respectfully,

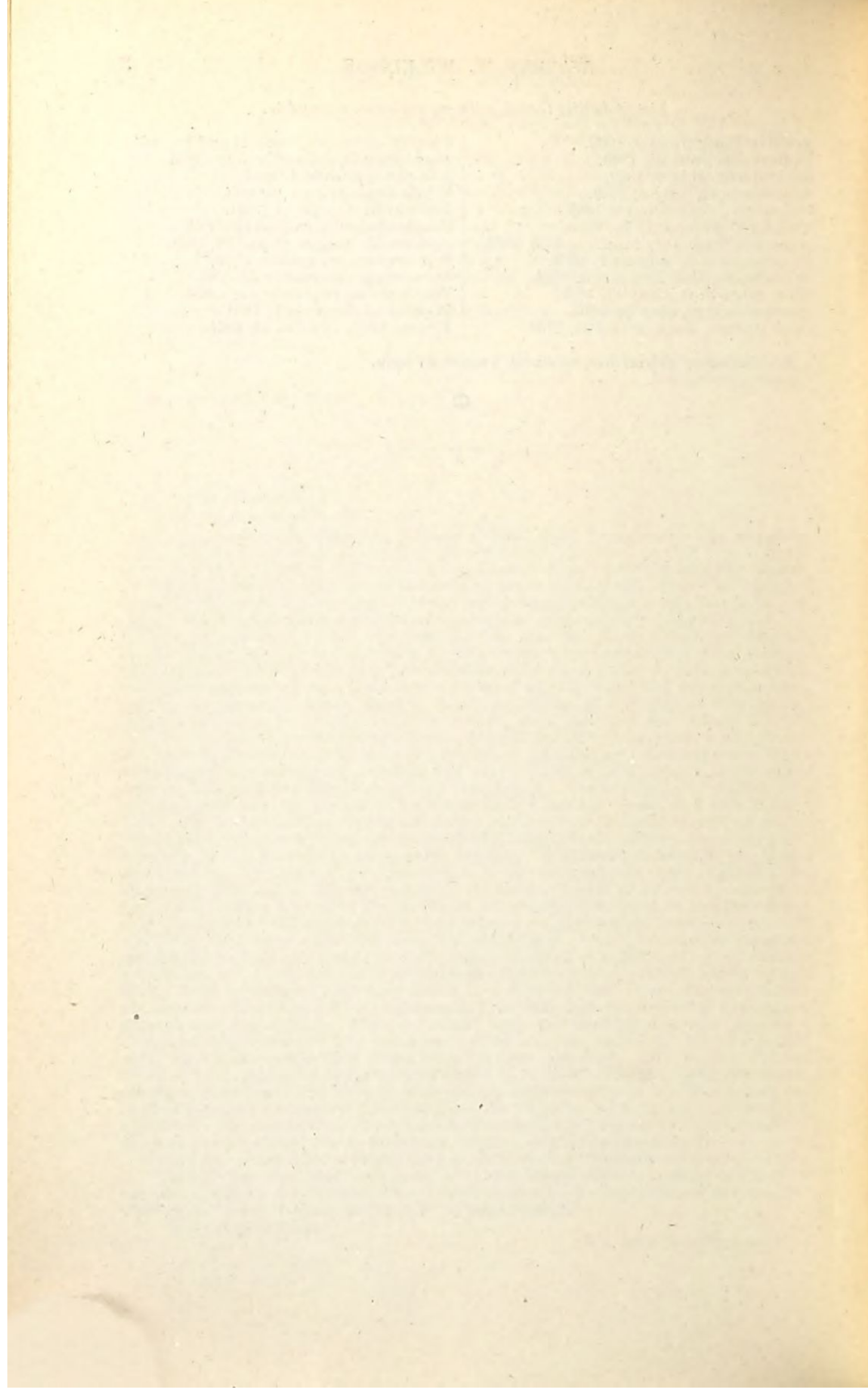
WARREN W. WILKINSON.

List of battles that I, with my regiment, engaged in.

Beverly Ford, June 9, 1863.	Trevillion Station, June 11 and 12, 1864.
Upperville, June 21, 1863.	Deep Bottom, July 27 and 28, 1864.
Gettysburg, July 3, 1863.	Newtown, August 4, 1864.
Williamsport, July 6, 1863.	White Post, August 10, 1864.
Boonsboro, July 8 and 9, 1863.	Berryville, August 21, 1864.
Falling Waters, July 14, 1863.	Shepherdstown, August 25, 1864.
Manassas Gap, July 21, 22, and 23, 1863.	Smithfield, August 28 and 29, 1864.
Brandy Station, August 1, 1863.	Winchester, September 19, 1864.
Wilderness, May 7, 8, and 9, 1864.	Luray Gap, September 22, 1864.
Glen Allen P. O., May 11, 1864.	Waynesboro, September 28, 1864.
Bottom Bridge, May 12, 1864.	Woodstock, October 9, 1864.
Coal Harbor, June 30 and 31, 1864.	Fishers Hill, October 19, 1864.

Besides many skirmishes, of which I make no note.

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LUCIUS L. DYER.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to
to be printed.

Mr. BOWERS, from the Committee on Military Affairs, submitted the
following

REPORT:

[To accompany H. R. 5049.]

The Committee on Military Affairs, having had under consideration the bill (H. R. 5049) to remove the charge of desertion against Lucius L. Dyer, beg leave to submit the following report:

The said Lucius L. Dyer was enrolled August 7, 1862, in Company A, Fourteenth Connecticut Volunteers, to serve three years. He was mustered in as second lieutenant Company C, same regiment, February 4, 1863, and served until June, 1863, when he was taken sick and placed in hospital. From the record furnished the committee by the War Department, it appears that the said officer was in hospital from May 1863, to June, 1863, when he was furloughed for twenty days. The evidence shows that Lieut. Dyer remained sick and unfit for duty until 1865, the post surgeon at Fort Trumbull, Conn., certifying to the fact that he reported regularly his whereabouts and the physicians forwarded regularly the certificates of his sickness and unfitness for duty.

It appears that the officer had done all in his power to keep himself in standing, but was cited to appear before a military commission in Washington; that he did appear; that all certificates from the post surgeons at Fort Trumbull setting forth the facts in his case were then produced; but that this defense was not considered satisfactory to the board, and that he was dismissed the service to date January 11, 1864 by Special Order No. 66.

The committee believe that the officer was hardly dealt with; that he was unfit for duty during this time; that he complied with the regulations in reporting his case and certificates of his sickness, and that he should be relieved.

The committee therefore recommend that the bill be amended by adding the following words: "*Provided*, That no pay, bounty, or emoluments shall become due or payable by reason of the passage of this act;" and as so amended that the bill do pass.

EMANUEL KLAUSER.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BELKNAP, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 8404.]

The Committee on Military Affairs to whom was referred the bill (H. R. 8404) for the relief of Emanuel Klauser late corporal of Company H, Fifty-fourth Regiment Illinois Volunteers, have duly considered the same and submit the following report:

A similar bill to the one under consideration passed the House in the Forty-fourth Congress, but no final action was had in the Senate. Again a similar bill passed the Senate in February, 1879, and was reported favorably by the Committee on Military Affairs of the House, but failed of final action in the House for want of time.

The committee find the facts of this case to be that the soldier served from 1861 until the 4th day of July, 1865; that he had been during all this time a noble, faithful, and obedient soldier. The trouble in this case grew out of this state of facts: The soldier was ordered with his company on parade to hear an oration on July 4, 1865, at Pine Bluff, Ark., and out of this grew the charges on which the soldier was tried and sentenced. It further appears that the soldier on this 4th day of July was sick, and he was excused by his orderly sergeant from attending the parade to hear the oration, and it further appears that the soldier was under the belief at the time that he was entitled to be mustered out and discharged.

The committee further finds that there does not appear in the conduct of the soldier the existence of that criminal animus which was necessary to complete the crime of mutiny, but it is true that the soldier was found guilty of the charge of mutiny, which entirely related to a conversation between the soldier and his captain, had on the 3d day of July, 1865, in regard to the oration. What the oration was or the necessity for it is not shown, but the soldier was found guilty and sentenced to be dishonorably discharged, from July 4, 1865, and to be confined in military prison at hard labor for and during the term of five years.

The committee further find that within thirty days from the promulgation of the sentence the unexecuted portion of the sentence was remitted by the President. It seems to the committee that the facts which led to the trial and sentence of this soldier grew out of a misunderstanding and that his punishment was unusual and the fine excessive, and in view of all the facts, the high moral character of the soldier, his long and faithful service, and that his application is indorsed by nearly a hundred late officers and soldiers of Illinois Volunteers, as

well as over 300 civilians, his neighbors and acquaintances, we therefore report the bill back to the House with a recommendation that the same do pass, with an amendment, however, added after the last word of said bill, as follows:

Provided, That no pay or emoluments shall be due said soldier by reason of the passage of this act.

The Senate report of the Forty-fifth Congress is also made a part of this report.

[Senate Report No. 572, Forty-fifth Congress, third session.]

The Committee on Military Affairs, to whom was referred the bill (S. 1540) for the relief of Emanuel Klauser, late corporal of Company H, Fifty-fourth Regiment Illinois Volunteers, have duly considered the same and submit the following report:

A precisely similar bill was pending in the Forty-fourth Congress, and was then referred to the Committee on Military Affairs, and the following report was made on January 30, 1877:

[Forty-fourth Congress, second session, Report No. 620.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4248) for the relief of Emanuel Klauser, late corporal of Company H, Fifty-fourth Regiment Illinois Volunteers, have duly considered the same, and submit the following report:

This bill directs the Secretary of War to remove the charge of mutiny against Emanuel Klauser, late corporal, etc., and grant him an honorable discharge. In the House the following report was made, to wit:

HOUSE OF REPRESENTATIVES,
Washington, D. C., December 16, 1876.

The Military Committee, to whom was referred the petition of Emanuel Klauser, late corporal Company H, Fifty-fourth Regiment Illinois Infantry Volunteers, report the same back to the House, with a bill for the relief of said Emanuel Klauser, with the recommendation that it pass.

Your committee, upon a careful examination of all the facts in this case, find that the said Corporal Klauser served his country faithfully and honorably in the field from 1861 to the date of his trial by court-martial, on the 31st day of July, 1865, when he was found guilty of mutiny, at Pine Bluff, Arkansas.

Your committee also find that Corporal Klauser is highly indorsed by the late officers of his regiment and others as being a good soldier and of good moral character. The sworn statements of Henry Hart, late captain Company H, and H. M. Scarborough, late lieutenant-colonel Fifty-fourth Regiment Illinois Volunteers, show that Emanuel Klauser was a young man under 21 years of age, a good and faithful soldier, ever ready and willing to perform his duty as a soldier, and that in their opinion said Emanuel Klauser did not intend to do any act of mutiny in his said company or regiment, and in this connection your committee calls attention to the sworn statement of said Emanuel Klauser; and the Judge-Advocate-General, in a report as to the men of Company H, Fifty-fourth Illinois Volunteers, tried by general court-martial, states that, "while the incidents of the offense clearly establish the guilt of a willful disobedience of orders, there does not appear in the conduct of the prisoners the existence of that criminal animus which is necessary to complete the crime of mutiny."

The bill passed the House upon this report.

Your committee referred the bill to the Secretary of War for information and report, and received, through him, from the Adjutant-General, the following letters and inclosures, to wit:

ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., January 23, 1877.

SIR: Herewith I return communication of January 17, 1877, addressed to you from Hon. F. M. Cockrell, United States Senate, together with act H. R. 4248 (referred by him), to change the record of, and grant an honorable discharge to, Emanuel Klauser, late corporal Company H, Fifty-fourth Illinois Infantry, and have the honor to invite your attention to a report in the case, dated March 6, 1874, from this office to the Secretary of War (copy inclosed), and his action thereon, set forth in his letter of March 11, 1874, to Lieut. Col. H. H. Scarborough *et al.*, a press-copy of which is herewith.

I am, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

To the honorable the SECRETARY OF WAR.

The report therein referred to, dated March 6, 1874, is as follows:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, March 6, 1874.

Respectfully submitted to the Secretary of War.

Emanuel Klauser, late Company H, Fifty-fourth Illinois Volunteers, applies for removal of the charge of mutiny from his record, with a view to issue of an honorable discharge.

The man's application is indorsed by nearly a hundred late officers and soldiers of Illinois volunteers.

It appears from the records of this office that this man, and five others of Company H, Fifty-fourth Illinois Volunteers, was tried by general court-martial for mutiny, violation of 44th article of war, and conduct prejudicial to good order and military discipline. This man was found guilty of mutiny only. He was sentenced to be dishonorably discharged, from July 4, 1865, and to be confined in military prison at hard labor for and during the term of five years. Sentence approved and promulgated in General Orders No. 10, headquarters United States forces at Pine Bluff, July 31, 1865.

The unexecuted portion of the sentence in case of this man and the five others mentioned above was remitted by the President upon a petition and a report of the Judge-Advocate-General. The order of the President was promulgated in Special Orders No. 521, of September 29, 1865, from this office.

It appears from the papers that this man and the others, tried for mutiny and found guilty except one, joined company at original organization in 1861, and reënlisted as veterans January, 1864, served honorably until July 4, 1865, when, the regiment being ordered out on parade to hear an oration, and these men believing their term had expired, refused to obey the order.

The Judge-Advocate-General, in his report of September 20, 1865, prior to the receipt of the record by him of the trial, stated that while the incidents of the offense clearly establish the guilt of a willful disobedience of orders, there does not appear in the conduct of the prisoners the existence of that criminal animus which is necessary to complete the crime of mutiny; that a strong doubt of their intent to rebel against a lawful order or to combine in a violent resistance against the authority of their commanders is strengthened by the record of their long and honorable service and by the existence among them of a belief that they were entitled to be mustered out and discharged.

It is presumed that the proceedings of the court are now on file in the Judge-Advocate-General's Office.

Any favorable action in case of these six men will necessitate the setting aside the proceedings of the general court-martial in their case, in order to enable them to receive honorable discharges and pay in place of the dishonorable discharges furnished in accordance with their sentence.

E. D. TOWNSEND,
Adjutant-General.

The letter of the Secretary of War, dated March 11, 1874, therein referred to, is as follows:

WAR DEPARTMENT, *March 11, 1874.*

GENTLEMEN: Referring to your petition of the 13th ultimo, praying that an honorable discharge be granted Emanuel Klauser, late corporal Company H, Fifty-fourth Illinois Volunteers, I beg to inform you that the Judge-Advocate-General, in a report as to the men of Company H, Fifty-fourth Illinois Volunteers, tried by general court-martial, states that "while the incidents of the offense clearly establish the guilt of a willful disobedience of orders, there does not appear in the conduct of the prisoners the existence of that criminal animus which is necessary to complete the crime of mutiny; still, as the proceedings were regular and the sentence fully executed, the Executive is powerless to afford the relief desired.

Application should be made to Congress; and the papers are accordingly returned, in order that they may be so submitted if desired.

Very respectfully,

WM. W. BELKNAP,
Secretary of War.

Lieut. Col. H. M. SCARBOROUGH,
Capt. HENRY HART, and others,
Shelbyville, Shelby County, Illinois.

Emanuel Klauser was arraigned before a court-martial, charged with mutiny, a violation of the present 22d Article of War, and with failing to repair at the fixed time to the place of parade appointed by his commanding officer, a violation of the present 33d Article of War (then 44th article), and with conduct prejudicial to good order, etc., was tried in 1865 and found guilty of mutiny only, and acquitted of the

other charges. His sentence was "to be dishonorably discharged from July 4, 1865, and to be confined in military prison at hard labor for and during the term of five years." This sentence was approved by the commanding officer of the United States forces at Pine Bluff, Ark., July 31, 1865. The President, by Special Orders No. 521, on September 29, 1865, remitted the then unexecuted portion of the sentence.

His regiment was ordered out on parade to hear an oration on July 4, 1865, at Pine Bluff, Ark., and out of this grew these charges, this trial, and sentence. Emanuel Klauser was sick on July 4, 1865, was excused by his orderly sergeant from attending parade to hear the oration and was consequently acquitted of this charge.

The Judge-Advocate-General admits that "there does not appear in the conduct of the prisoner the *existence of that criminal animus which is necessary to complete the crime of mutiny*," but states that "*the incidents of the offense clearly establish the guilt of a willful disobedience of orders*." The court-martial, however, acquitted him of the charge of disobedience of orders—refusal to attend the *parade* to hear an oration—and found him guilty of mutiny only, thus disagreeing with the Judge-Advocate-General's judgment. The proof of mutiny consisted of a conversation between this corporal and a captain on the evening of July 3, 1865, in relation to the contemplated parade on July 4, in the presence of these two persons only. What the *oration* was, or was to be, is not stated. The necessity of this oration is not shown.

Klauser had been a noble and faithful and obedient soldier, of high moral character, and for this alleged offense was punished with what seemed clearly to be a "cruel and unusual punishment," and an "excessive fine imposed."

However loth your committee may be to interfere with the proceedings of courts-martial, yet they feel that this case peculiarly demands favorable action by Congress, and they therefore report back the bill as it passed the House, without amendment, and recommend that it do pass the Senate.

The bill in the Forty-fourth Congress passed the House and was favorably reported in the Senate, placed on the calendar, and no final action had.

Your committee have again duly considered this bill, and fully indorse the foregoing report, and recommend that the bill be passed by the Senate.



BENJAMIN S. BARNES.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, of Tennessee, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 1166.]

The Committee on War Claims, to whom was referred the bill (H. R. 1166) for the relief of Benjamin S. Barnes, submit the following report:

The proof filed in support of the bill shows that Benjamin S. Barnes, of Essex County, Mass., was on the 26th of August, 1862, the possessor and owner in fee simple of a certain farm with the farm buildings thereon, situated in said county of Essex; that on the said August 26 soldiers in the service of the United States were ordered to be encamped thereon by Capt. William McKim, assistant quartermaster of the United States; that soldiers then and thereafterward encamped thereon, under said orders, comprised regiments of Massachusetts troops; that the encampment was under the command of Col. Edward F. Jones; that the said soldiers remained on said farm from said date to November 29, 1862; that during said time, by order of the post commandant, the wall was taken away to make room, and the best of it used to stone wells, ovens, sinks, drains, etc., and that wood and timber were cut off by order of the officers to make more room back of the camp, so that the camp might be on a straight line; that the troops afterwards burned the said wood and timber for fuel; that also said soldiers did great and serious damage and injury by destroying claimant's wood, timber, barn, and other property by fire, consuming the fruit and other crops growing on said farm.

It appears from the records and evidence in reference to the subject-matter of this bill, obtained from the War Department and filed in this case, that the claimant filed a claim against the United States; that Capt. McKim, Assistant Quartermaster U. S. Army, requested Abram D. Wait and James Kimball, two of the county commissioners of said Essex County, to view the said premises and determine the amount of damage and loss as herein alleged; that said county commissioners, after notifying parties interested, met at Boxford, Mass., on the 21st and also on the 22d of said October, viewed and examined the premises and heard witnesses; that the said commissioners again on the 25th of November and on the 8th and 16th of December following, having in the meantime been joined, by order of Col. H. Day, military commander, with Capt. R. M. Morris, of the Third U. S. Cavalry, on the part of the United States, did make a further examination; that in conclusion they awarded the sum of \$1,273, to be paid to the claimant

by the United States, and that the costs of said examination be also paid by the United States.

Your committee is of opinion that the claimant suffered great loss, and has never received from the United States, or from any other source, any satisfaction thereof.

The committee do not regard the payment of this award as a question submitted to their decision upon the original facts on which the award is based. It has been determined and allowed by a military board, called under the apparent sanction of the Government, and whose action seems to have been approved by the officer commanding the department, and it has not been paid. And the action of the board seems to have been approved by the War Department. The committee use the term "seems to have been approved" because the papers and record remaining in that Department show no disapproval, which may be said to be a negative pregnant, almost as strong as affirmative proof; and your committee think its findings are entitled to credit, and to hold such adjudications, not formally disapproved by the authority convening the board, as final.

The committee report back the bill and recommend its passage.



CITY OF CAIRO, ILL.

MAY 27, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SMITH, of Illinois, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 4235.]

The Committee on Claims, to whom was referred the bill (H. R. 4235) for the relief of the city of Cairo, in the State of Illinois, having given same and all the facts in connection therewith very careful and thorough consideration, report as follows:

From the evidence presented it is conclusively shown that the United States Marine Hospital and the United States custom-house and post-office buildings mentioned and described in said bill, together with their grounds, in the city of Cairo, Ill., are the property of the United States. The improvements named in said bill have been made and provided for by the city of Cairo. The amounts mentioned in said bill for improvements of streets and avenues around said Government property, as shown by the evidence, is one-half the actual amounts which the said city of Cairo has paid and for which it is responsible for the improvements of the streets and avenues around said Government property.

Your committee further find that in justice the Government should refund to the city of Cairo, Ill., the amount mentioned in said bill for the improvement of streets and avenues around such property.

Your committee further report that this has been the uniform custom of the Government in such case, and that there being no general law covering such cases, relief can only be granted by special bill.

Your committee therefore respectfully recommend that said bill as presented do pass.

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COLVILLE INDIAN RESERVATION.

MAY 27, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LYNCH, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 7557.]

The Committee on Indian Affairs, to whom was referred House bill 7557, with Senate amendments, have had the same under consideration and report back to the House with recommendation to nonconcur in said Senate amendments, and ask for a committee of conference thereon, as requested by the Senate.

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LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIA-
TION BILL.

MAY 28, 1892.—Committed to the Committee of the Whole House on the state of the
Union and ordered to be printed.

Mr. FORNEY, from the Committee on Appropriations, submitted the
following

REPORT:

[To accompany H. R. 9040.]

In presenting the bill making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1893, the Committee on Appropriations submit the following in explanation thereof:

The estimates on which the bill is based will be found on pages 9–68 and 77–88 of the Book of Estimates for 1893, aggregating \$22,754,038.05, of which amount there is recommended in the bill \$21,683,752.05.

The appropriations for the same purposes for the current fiscal year aggregate \$22,141,874.75, being \$458,122.70 more than is recommended in the bill for the service of the fiscal year 1893.

The amount recommended in the bill is \$1,070,286.00 less than the aggregate estimates submitted. The whole number of salaries specifically provided for in the bill is 10,634, being 259 less than the number estimated for, and 71 less than the number provided for in the law for the current year.

Changes in the number or grade of officers or employés of the Government and their rate of compensation, as compared with the current law, are recommended in the bill as follows:

SENATE.

A reduction of the employés authorized during the last Congress is proposed as follows:

Six messengers at \$1,440 each, three skilled laborers at \$1,000 each, thirteen laborers at \$720 each, two mail-carriers at \$1,200 each, three folders at \$1,000 each, and ten folders at \$720 each, and also of the thirty-nine clerks to Senators who are not chairmen of committees, at \$6 per day each, during the session—seventy-six employés in all, with compensation aggregating \$61,914 for the fiscal year 1893.

Otherwise the bill appropriates for the officers, clerks, and other employés in the service of the Senate in the same terms as provided in the law for the current year, except that for session employés the usual reduction is made in their aggregate compensation growing out of the shorter time that they will be employed during the ensuing session as compared with the present session of Congress.

HOUSE OF REPRESENTATIVES.

The amount for compensation of members is increased so as to provide for the twenty-five additional members authorized under the last apportionment act, and whose compensation will commence March 4, 1893. A reduction is made of three index clerks at \$1,600 each in the office of the clerk.

Under instructions expressed in resolutions of the House, provision is made for the assistant Journal clerk and clerk to the Committee on Accounts at \$2,000 per annum each, instead of at the rate of \$6 per day each during the session, as heretofore.

Otherwise the bill appropriates for the officers, clerks, and other employés in the service of the House in the same terms as the law for the current year provides, except that for session employés the usual reduction is made in their aggregate compensation, growing out of the lesser period of time that they will be employed during the ensuing session as compared with the present session of Congress.

TREASURY DEPARTMENT.

SECRETARY'S OFFICE.

No provision is recommended for the salary of the chief of the Revenue Marine division at \$2,500, as that position is now, and has, for more than two years past, been satisfactorily filled by an officer detailed from the Revenue Marine Service.

SECOND COMPTROLLER'S OFFICE.

A reduction is made of one clerk of class 4, \$1,800; one clerk of class 3, \$1,600, and two clerks at \$1,000 each.

SECOND AUDITOR'S OFFICE.

A reduction is made of two clerks at \$840 each and one clerk at \$720.

THIRD AUDITOR'S OFFICE.

A reduction is made of one chief of division at \$2,000, two clerks at \$1,000 each, and two laborers at \$660 each.

FOURTH AUDITOR'S OFFICE.

A reduction is made of one clerk at \$800.

TERRITORY OF UTAH.

The board of five commissioners at \$5,000 each is abolished and their duties devolved upon a board to consist of the governor, chief justice, and secretary of the Territory, who are to serve without additional compensation.

WAR DEPARTMENT.

OFFICE OF THE SURGEON-GENERAL.

Provision is made for one chemist, \$2,088; one pathologist, \$1,800; one microscopist, \$1,800, and one assistant librarian, \$1,800. These officers are now employed and have heretofore been paid from the appropriation carried in the army bill for contract surgeons, which appropriation has been omitted from the army bill for 1893.

STATE, WAR, AND NAVY DEPARTMENT BUILDINGS.

Provision is made for four firemen at \$720 each, who have heretofore been paid from the appropriation for fuel, lights, and miscellaneous items.

INTERIOR DEPARTMENT.

INDIAN OFFICE.

A reduction is made of \$2,500 for per diem clerks to transcribe and copy contracts, reports, and miscellaneous matters.

OFFICE OF ARCHITECT OF THE CAPITOL.

An increase is made, under a resolution of the House, of one laborer at \$720 for service in the terrace.

JUDICIAL.

CIRCUIT COURTS OF APPEALS.

A reduction is made of nine marshals at \$2,500 each.

SUPREME COURT, DISTRICT OF COLUMBIA.

The salary of the chief justice is reduced from \$5,000 to \$4,500, and the salaries of the five associate judges from \$5,000 to \$4,000, which reductions are made to conform to the law fixing said salaries.

COURT OF CLAIMS.

An increase is made of one clerk at \$1,200.

LIMITATIONS.

Limitations with reference to appropriations made in the bill, not heretofore imposed, are recommended as follows:

On page 28, after line 17, in connection with the appropriation for salaries in the office of the Second Comptroller, the following has been in the law from year to year, but it is proposed in the form as now recommended to make it permanent and continuing in its effect:

That hereafter the adjustment of accounts of the Soldiers' Home, under section forty-eight hundred and eighteen of the Revised Statutes, in the offices of the Second Comptroller and Second Auditor, shall be limited to those originating subsequent to March third, eighteen hundred and eighty-one.

On page 30, after line 8, in connection with the appropriation for salaries in the office of the Second Auditor, the following:

That hereafter nothing in section two hundred and seventy-seven of the Revised Statutes of the United States shall be so construed as to prevent the Second Auditor of the Treasury from disallowing claims for arrears of pay and bounty in cases where it appears from the records and files of his office that payment in full has already been made to the soldier himself, or to his widow or legal heirs: *Provided*, That if any person whose claim may be disallowed be dissatisfied with the action of the Auditor, he may, within six months, appeal to the Second Comptroller; otherwise the Auditor's action shall be deemed final and conclusive and be subject to revision only by Congress or the proper courts.

4 LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATIONS.

On page 32, after line 24, in connection with the appropriation for salaries in the office of the Auditor for the Post-Office Department, the following:

That hereafter the Postmaster-General shall require each postmaster at a money order or postal-note office to render to the Post-Office Department monthly, semi-monthly, weekly, semiweekly, or daily accounts of all money orders and postal notes issued and paid; of all fees received for issuing them; of all transfers and payments made from money-order funds; and of all money received to be used for the payment of money orders or postal notes, or on account of money-order business.

On page 39, after line 5, in connection with the appropriation for salaries in the Bureau of Statistics, the following:

That hereafter collectors of customs shall render to the Bureau of Statistics, in such manner and form and at such periods as the Secretary of the Treasury may prescribe, returns of exports to foreign countries leaving the United States by rail. Any person who shall hereafter deliver to any railway or transportation company, or other common carrier, commodities for transportation and exportation by rail from the United States to foreign countries shall also deliver to the agent of such railway or transportation company or common carrier a manifest, in such form as the Secretary of the Treasury may prescribe, duly verified by oath or affirmation, exhibiting the kinds, quantities, and values of the several articles delivered by such person for transportation and exportation; and any railway or transportation company or common carrier that shall hereafter transport commodities for exportation, as herein specified, without having received such manifest of the persons shipping the same for transportation and exportation as aforesaid, shall be liable to a penalty of twenty-five dollars.

And no railway car containing commodities, the product or manufacture of the United States, or foreign goods, duty paid or free of duty, intended to be exported to any foreign country, shall be permitted hereafter to leave the United States until the agent of the railway or transportation company, or the person having such car in charge, shall deliver to the customs officer at the last port in the United States through which the commodities pass into foreign territory a manifest thereof, which shall specify the kinds and quantities of the commodities in the form prescribed by the Secretary of the Treasury, and said manifest shall be accompanied by the manifests thereof required herein to be delivered to the railway or transportation companies by the owners, shippers, or consignors of the commodities. The agent or employé of the railway or transportation company who shall hereafter omit or refuse to deliver to the customs officer such manifests of the lading of any car shall be liable to a penalty of fifty dollars for each offense, or the detention of the car until such manifests shall be furnished, or information satisfactory to such customs officer as to the kinds, quantities, and values of the domestic and foreign free or duty-paid commodities laden on such car.

On page 44, after line 15, in connection with the appropriation for rent of buildings for the Treasury Department, the following:

That hereafter it shall be the duty of the Secretary of the Treasury to cause to be prepared and submitted to Congress each year, in the annual Book of Estimates of appropriations, a statement of the buildings rented within the District of Columbia for the use of the Government, the purposes for which rented, and the annual rental of each.

On page 47, after line 6, in connection with one appropriation for salaries and expenses of agents and surveyors, fees and expenses of internal revenue gaugers, the following:

That section eight of an act entitled "An act to amend the laws relating to internal revenue," approved March first, eighteen hundred and seventy-nine, be amended by striking out all after said number and substituting the following:

"When any rectifier intends to rectify or compound any distilled spirits he shall, before emptying any package of distilled spirits for that purpose, give notice in duplicate to the collector of internal revenue for the district of his intention so to rectify, and submit such package for the inspection of a United States gauger, who shall duly weigh or gauge such package and its contents and make due return thereof, and such spirits shall not be emptied for rectification, nor rectified or compounded in the package, until gauged or weighed as herein above provided. And such notice and return shall be made in such form and contain such particulars as the Commissioner of Internal Revenue may from time to time prescribe."

That section thirty-three hundred and twenty of the Revised Statutes of the United States be amended by striking out all after said number and substituting the following:

"Whenever any cask or package of rectified spirits containing five wine gallons or more is filled for shipment, sale, or delivery, on the premises of any rectifier who has paid the special tax required by law, it shall be marked, branded, and stamped by the rectifier in such manner and under such rules and regulations as the Commissioner of Internal Revenue may prescribe."

That section thirty-three hundred and twenty-three of the Revised Statutes of the United States be amended by striking out all after said number and substituting the following:

"Every package of distilled spirits containing five wine gallons or more, filled on the premises of a wholesale liquor dealer, who has paid the special tax required by law, shall be marked, branded, and stamped by such wholesale liquor dealer in such manner and under such rules and regulations as the Commissioner of Internal Revenue may prescribe; and on or before the tenth day of each month every wholesale liquor dealer shall make return, under oath, to the collector of internal revenue for the district of the various kinds, and quantities of each kind, and of the total quantity of distilled spirits received on his premises; and of the various kinds, and quantities of each kind, and of the total quantity of distilled spirits sent out from his stock or possession during the preceding month; and of the quantity of each kind, and the total quantity, remaining on hand at the end of the month; and such return shall be made in such form and contain such other particulars as the Commissioner of Internal Revenue may prescribe."

That section thirty-two hundred and ninety-five of the Revised Statutes of the United States be amended by striking out the final words of said section, namely, the words following: "By cutting or burning a canceling line across such marks or brands." The foregoing amendments of laws relating to internal revenue shall take effect thirty days from and after the passage of this act.

On page 63, after line 24, following the appropriation for legislative expenses of the Territory of Utah, the following:

That so much of section 9 of the act entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March 22, 1882, as authorizes the President to appoint a board of five persons to exercise certain powers and duties prescribed in said section, be, and the same is hereby, repealed; and the said board is hereby abolished, and all powers and duties conferred upon said board are hereby imposed upon and shall be discharged, without additional compensation, by a board hereby created, to be constituted of the governor, chief justice, and secretary of the Territory of Utah.

On page 64, after line 20, following the appropriation for the election officers of the Territory of Utah, the following:

There are hereby granted to the Territory of Utah, for the uses hereinafter declared, the property and premises known as the Industrial Christian Home of Utah, situated in the city and county of Salt Lake, Territory of Utah, being lot three and a strip of land off the south side of lot four in block fifty-two, plat B, Salt Lake City survey, more particularly described as follows:

Commencing on the the east side of Fifth East street, at the southeast corner of said lot three and running east on the south line of said lot three hundred and thirty feet to the southeast corner of the lot, thence north in the center of the block one hundred and seventy-three and one-quarter feet, thence west parallel with the lot lines one hundred and fifteen feet, thence north eighteen feet, thence west fifty feet, thence south eighteen feet, thence west one hundred and sixty-five feet to Fifth East street, thence along Fifth East street one hundred and seventy-three and one-quarter feet to the beginning, together with the buildings and improvements and fixtures, fittings and furniture in and used in connection with said buildings: *Provided*, That the granted premises shall be used by said Territory as a site and accommodations for its school for the deaf and deaf mutes until Congress shall otherwise provide: *And provided further*, That said property and premises shall revert to the United States whenever the same shall cease to be used by said Territory for such purposes.

On page 104, after line 20, in connection with the appropriations for rent of buildings for the Post-Office Department, the following:

And the topographers' office shall be removed to and furnished accommodations in the space rented for the city post-office in the building on G street between Sixth and Seventh streets.

On page 110, after line 6, in connection with the appropriation for salaries of the circuit courts of appeals, the following:

That so much of section 2 of the act approved March 3, 1891, to establish circuit courts of appeal, as authorizes the appointment of a marshal to each of said courts at a salary of \$2,500 be, and the same is hereby, repealed, and any duties or powers imposed upon said marshals under the said act shall be performed by the United States marshals in and for the districts where terms of said courts may be held.

On page 112 the following as section 3 of the bill:

That hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employés, of whatever grade or class, in their respective departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or executive order: *Provided*, That the heads of the Departments may, by special order, stating the reason, further extend or limit the hours of service of any clerk or employé in their Departments, respectively; but in case of an extension, it shall be without additional compensation: *And provided further*, That the Secretary of any Department may grant thirty days' annual and thirty days' sick leave, with pay, in any one year to each clerk or employé, the sick leave to be allowed in cases of personal illness only, or where some member of the immediate family is afflicted with a contagious disease and requires the care and attendance of such employé, or where his or her presence in the Department would jeopardize the health of fellow clerks: *And be it further provided*, That in exceptional and meritorious cases, where to limit such sick leave would work peculiar hardship, it may be extended in the discretion of the Secretary, with pay, not exceeding sixty days in any one case or in any one calendar year.

This section shall not be construed to mean that so long as a clerk or employé is borne upon the rolls of the Department in excess of the time herein provided for, or granted, that he or she shall be entitled to pay during the period of such excessive absence, but that the pay shall stop upon the expiration of the granted leave.

The following statement shows in detail, by Departments and bureaus or offices and by number of specific salaries, the appropriations for 1892, the estimates submitted for 1893, and the amounts recommended in the accompanying bill:

Legislative, executive, and judicial bill, 1893.

Object.	Appropriations for 1892.		Estimates for 1893.		Recommended for 1893.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
<i>Senate.</i>						
For salaries of Senators.....	\$440,000.00	88	\$440,000.00	88	\$440,000.00	88
mileage	45,000.00	.....	45,000.00	.....	45,000.00	.....
For salaries of officers and employes	416,444.90	302	378,522.90	302	316,608.90	226
reporting debates	25,000.00	.....	25,000.00	.....	25,000.00	.....
contingent expenses	92,270.00	.....	100,820.00	.....	72,270.00	.....
Total Senate	1,018,714.90	390	989,342.90	390	898,878.90	314
For compiling Congressional Directory.....	1,200.00	.....	1,200.00	.....	1,200.00	.....
<i>Capitol police.</i>						
For salaries	38,800.00	36	38,800.00	36	38,800.00	36
contingent	100.00	.....	100.00	.....	100.00	.....
Total Capitol police	38,900.00	36	38,900.00	36	38,900.00	36
<i>House of Representatives.</i>						
For salaries of Members and Delegates (including 25 additional Members from March 4, 1893).....	1,700,000.00	335	1,720,000.00	360	1,720,000.00	360
mileage	115,000.00	.....	120,000.00	.....	115,000.00	.....
For salaries of officers and employes	414,981.30	319	376,788.30	316	379,336.30	316
contingent expenses	104,405.00	.....	104,405.00	.....	101,405.00	.....
Total House of Representatives.....	2,334,386.30	654	2,321,193.30	676	2,315,741.30	676

Legislative, executive, and judicial bill, 1893—Continued.

Object.	Appropriations for 1892.		Estimates for 1893.		Recommended for 1893.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
<i>Public Printer.</i>						
For salaries.....	\$15, 100. 00	7	\$15, 100. 00	7	\$15, 100. 00	7
contingent expenses	3, 000. 00	.....	3, 000. 00	.....	3, 000. 00	.....
Total Public Printer	18, 100. 00	7	18, 100. 00	7	18, 100. 00	7
<i>Library of Congress.</i>						
For salaries	42, 600. 00	29	45, 020. 00	30	42, 600. 00	29
miscellaneous expenses	15, 000. 00	.....	18, 000. 00	.....	15, 000. 00	.....
Total Library of Congress	57, 600. 00	29	63, 020. 00	30	57, 600. 00	29
<i>Botanic Garden.</i>						
For Superintendent.....	1, 800. 00	1	1, 800. 00	1	1, 800. 00	1
wages and miscellaneous expenses	17, 093. 75	.....	17, 093. 75	.....	17, 093. 75	.....
Total Botanic Garden	18, 893. 75	1	18, 893. 75	1	18, 893. 75	1
<i>Executive.</i>						
For the President	50, 000. 00	1	50, 000. 00	1	50, 000. 00	1
For the Vice-President	8, 000. 00	1	8, 000. 00	1	8, 000. 00	1
For salaries, executive office	35, 200. 00	21	35, 200. 00	21	35, 200. 00	21
contingent expenses	9, 000. 00	.....	9, 000. 00	.....	8, 000. 00	.....
Total executive.....	102, 200. 00	23	102, 200. 00	23	101, 200. 00	23

<i>Civil Service Commission.</i>									
For salaries	36,400.00	22	36,400.00	22	36,400.00	22	36,400.00	22	22
traveling expenses	5,250.00	-----	5,250.00	-----	5,250.00	-----	5,250.00	-----	-----
Total Civil Service Commission.....	41,650.00	22	41,650.00	22	41,650.00	22	41,650.00	22	22
<i>Department of State.</i>									
For salaries	119,870.00	82	133,230.00	91	119,870.00	82	119,870.00	82	82
miscellaneous and contingent expenses.....	19,280.00	-----	33,280.00	-----	16,900.00	-----	16,900.00	-----	-----
Total Department of State.....	139,150.00	82	166,510.00	91	136,850.00	82	136,850.00	82	82
<i>Treasury Department.</i>									
For salaries, Secretary's office.....	489,331.00	517	491,904.50	521	486,804.50	516	486,804.50	516	516
stationery.....	28,000.00	-----	28,000.00	-----	24,000.00	-----	24,000.00	-----	-----
postage	1,700.00	-----	1,700.00	-----	1,700.00	-----	1,700.00	-----	-----
rent of buildings	5,520.00	-----	3,970.00	-----	3,970.00	-----	3,970.00	-----	-----
contingent expenses	69,700.00	-----	69,700.00	-----	61,800.00	-----	61,800.00	-----	-----
For salaries, Supervising Architect's office	7,720.00	3	7,720.00	3	7,720.00	3	7,720.00	3	3
For salaries, First Comptroller's office	92,480.00	65	92,480.00	65	92,480.00	65	92,480.00	65	65
For salaries, Second Comptroller's office	100,420.00	69	100,420.00	69	95,020.00	65	95,020.00	65	65
For salaries, Commissioner of Custom's office	49,430.00	33	49,430.00	33	49,430.00	33	49,430.00	33	33
For salaries, First Auditor's office	88,810.00	63	88,810.00	63	88,810.00	63	88,810.00	63	63
For salaries, Second Auditor's office	298,230.00	221	298,230.00	221	295,830.00	218	295,830.00	218	218
restoring rolls, Second Auditor's office	21,000.00	-----	21,000.00	-----	21,000.00	-----	21,000.00	-----	-----
For salaries, Third Auditor's office	193,850.00	145	191,850.00	144	188,530.00	140	188,530.00	140	140
For salaries, Fourth Auditor's office	75,030.00	55	75,030.00	55	74,230.00	54	74,230.00	54	54
For salaries, Fifth Auditor's office	47,610.00	33	47,610.00	33	47,610.00	33	47,610.00	33	33
For salaries, Sixth Auditor's office	558,590.00	477	558,590.00	477	558,590.00	477	558,590.00	477	477
For salaries, Treasurer's office	273,364.80	228	273,361.60	228	273,361.60	228	273,361.60	228	228
For salaries, Treasurer's office (reimbursable)	61,800.00	48	61,800.00	48	61,800.00	48	61,800.00	48	48
For salaries, Register's office.....	139,750.00	108	139,750.00	108	139,750.00	108	139,750.00	108	108
For salaries, Comptroller of the Currency's office	103,420.00	77	103,420.00	77	103,420.00	77	103,420.00	77	77
For salaries, Comptroller of the Currency's office (reimbursable)	16,620.00	13	16,820.00	13	16,620.00	13	16,620.00	13	13
expenses special examinations and of macerating machines	2,000.00	-----	2,000.00	-----	1,600.00	-----	1,600.00	-----	-----
For salaries, Commissioner of Internal Revenue's office	272,580.00	209	272,580.00	209	272,580.00	209	272,580.00	209	209
For salaries, Commissioner of Internal Revenue's office (reimbursable)	2,500.00	2	2,500.00	2	2,500.00	2	2,500.00	2	2
For salaries, Light-House Board	36,240.00	29	36,240.00	29	36,240.00	29	36,240.00	29	29

Legislative, executive, and judicial bill, 1893—Continued.

Object.	Appropriations for 1892.		Estimates for 1893.		Recommended for 1893.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
<i>Treasury Department—Continued.</i>						
For salaries, Life-Saving Service.....	\$37,780.00	26	\$37,780.00	26	\$37,780.00	26
For salaries, Bureau of Navigation.....	25,780.00	21	25,780.00	21	25,780.00	21
For salaries, Bureau of Engraving and Printing.....	17,450.00	11	17,450.00	11	17,450.00	11
For salaries, Bureau of Statistics.....	46,710.00	36	46,710.00	36	46,710.00	36
collecting statistics relating to commerce.....	1,500.00	.....	1,500.00	.....	1,000.00	.....
For salaries, Secret Service Division.....	11,620.00	7	11,620.00	7	11,620.00	7
For salaries, Standard Weights and Measures office.....	4,190.00	4	4,190.00	4	4,190.00	4
contingent and expenses international committee.....	1,100.00	.....	1,100.00	.....	1,100.00	.....
For salaries, Director of the Mint's office.....	29,160.00	18	29,160.00	18	29,160.00	18
freight on bullion and coin.....	10,000.00	.....	10,000.00	.....	9,000.00	.....
contingent expenses.....	7,750.00	.....	7,750.00	.....	6,750.00	.....
Total Treasury Department.....	3,228,735.80	2,518	3,227,956.10	2,521	3,195,936.10	2,504
<i>Internal Revenue.</i>						
For salaries and expenses of collectors and deputies, etc.....	1,965,000.00	.....	1,950,000.00	.....	1,900,000.00	.....
For salaries and expenses of agents, etc.....	2,000,000.00	.....	2,150,000.00	.....	1,900,000.00	.....
For inspectors of sugar and their expenses.....	36,000.00	12	40,000.00	12	30,000.00	12
Total Internal Revenue.....	4,001,000.00	12	4,140,000.00	12	3,830,000.00	12
<i>Independent Treasury.</i>						
For salaries at Baltimore.....	22,800.00	15	22,800.00	15	22,800.00	15
For salaries at Boston.....	37,910.00	24	37,910.00	24	37,910.00	24
For salaries at Chicago.....	28,300.00	20	28,300.00	20	28,300.00	20
For salaries at Cincinnati.....	17,560.00	13	17,560.00	13	17,560.00	13
For salaries at New Orleans.....	18,090.00	12	19,590.00	13	18,090.00	12
For salaries at New York.....	192,890.00	113	192,890.00	113	192,890.00	113

For salaries at Philadelphia	42,340.00	30	42,340.00	30	42,340.00	30	42,340.00	30
For salaries at St. Louis	19,060.00	13	19,060.00	13	19,060.00	13	19,060.00	13
For salaries at San Francisco	27,120.00	15	27,120.00	15	27,120.00	15	27,120.00	15
For salaries, special agents, etc.	5,000.00	-----	5,000.00	-----	5,000.00	-----	5,000.00	-----
checks and drafts	9,000.00	-----	9,000.00	-----	9,000.00	-----	9,000.00	-----
Total independent treasury	420,070.00	255	421,570.00	256	418,070.00	255	418,070.00	255
<i>Mints and Assay Offices.</i>								
For salaries at Carson, Nev.	29,550.00	14	29,550.00	14	29,550.00	14	29,550.00	14
wages of workmen	60,000.00	-----	60,000.00	-----	60,000.00	-----	60,000.00	-----
contingent expenses	25,000.00	-----	25,000.00	-----	25,000.00	-----	25,000.00	-----
For salaries at Denver, Colo.	10,950.00	6	10,950.00	6	10,950.00	6	10,950.00	6
wages of workmen	13,750.00	-----	13,750.00	-----	13,750.00	-----	13,750.00	-----
contingent expenses	6,000.00	-----	4,500.00	-----	2,500.00	-----	2,500.00	-----
For salaries at New Orleans, La.	31,950.00	17	31,950.00	17	31,950.00	17	31,950.00	17
wages of workmen	74,000.00	-----	74,000.00	-----	74,000.00	-----	74,000.00	-----
contingent expenses	35,000.00	-----	35,000.00	-----	33,000.00	-----	33,000.00	-----
For salaries at Philadelphia, Pa.	41,550.00	18	41,550.00	18	41,550.00	18	41,550.00	18
wages of workmen	293,000.00	-----	293,000.00	-----	293,000.00	-----	293,000.00	-----
contingent expenses	80,000.00	-----	80,000.00	-----	75,000.00	-----	75,000.00	-----
For salaries at San Francisco, Cal.	41,100.00	18	41,100.00	18	41,100.00	18	41,100.00	18
wages of workmen	170,000.00	-----	170,000.00	-----	170,000.00	-----	170,000.00	-----
contingent expenses	40,000.00	-----	40,000.00	-----	35,000.00	-----	35,000.00	-----
For salaries at Boise City, Idaho.	3,200.00	2	3,200.00	2	3,200.00	2	3,200.00	2
contingent expenses and labor	9,000.00	-----	9,000.00	-----	7,500.00	-----	7,500.00	-----
For salaries at Charlotte, N. C.	2,750.00	2	2,750.00	2	2,750.00	2	2,750.00	2
contingent expenses and labor	2,500.00	-----	2,500.00	-----	2,000.00	-----	2,000.00	-----
replacing worn-out furnaces, etc.	-----	-----	1,000.00	-----	1,000.00	-----	1,000.00	-----
For salaries at Helena, Mont.	7,700.00	4	7,700.00	4	7,700.00	4	7,700.00	4
wages of workmen	12,700.00	-----	12,700.00	-----	12,700.00	-----	12,700.00	-----
contingent expenses	5,000.00	-----	5,000.00	-----	4,500.00	-----	4,500.00	-----
For salaries at New York, N. Y.	39,250.00	17	39,250.00	17	39,250.00	17	39,250.00	17
wages of workmen	30,000.00	-----	30,000.00	-----	25,000.00	-----	25,000.00	-----
contingent expenses	10,000.00	-----	10,000.00	-----	10,000.00	-----	10,000.00	-----
For salaries at St. Louis, Mo.	3,500.00	2	3,500.00	2	3,500.00	2	3,500.00	2
contingent expenses and labor	2,400.00	-----	2,400.00	-----	2,400.00	-----	2,400.00	-----
Total mints and assay offices	1,079,850.00	100	1,079,350.00	100	1,015,350.00	100	1,015,350.00	100

Legislative, executive, and judicial bill, 1893—Continued.

Object.	Appropriations for 1892.		Estimates for 1893.		Recommended for 1893.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
<i>Government in the Territories.</i>						
For salaries in Alaska	\$22,000.00	15	\$22,000.00	15	\$22,000.00	15
contingent expenses	2,000.00	.....	2,000.00	.....	2,000.00	.....
For salaries in Arizona (including \$3,000 in urgent deficiency act, 1892) ..	16,900.00	7	16,900.00	7	16,900.00	7
legislative expenses	2,000.00	.....	25,000.00	.....	24,250.00	.....
contingent expenses	500.00	.....	500.00	.....	500.00	.....
For salaries in New Mexico	19,900.00	8	19,900.00	8	19,900.00	8
legislative expenses	2,000.00	.....	24,910.00	.....	26,000.00	.....
contingent expenses	500.00	.....	500.00	.....	500.00	.....
repairs to adobe palace at Santa Fé	2,000.00	.....	.....	.....	.....	.....
For salaries in Oklahoma	13,400.00	5	13,400.00	5	13,400.00	5
legislative expenses	3,000.00	.....	29,000.00	.....	24,250.00	.....
contingent expenses	1,500.00	.....	1,500.00	.....	500.00	.....
For salaries in Utah	16,400.00	6	16,400.00	6	16,400.00	6
legislative expenses	22,000.00	.....	2,500.00	.....	1,500.00	.....
contingent expenses	1,000.00	.....	1,000.00	.....	500.00	.....
commission, salaries	25,000.00	5	25,000.00	5	.....	.....
commission, contingent expenses	8,500.00	.....	10,000.00	.....	3,000.00	.....
expenses of officers of election	25,000.00	.....	25,000.00	.....	25,000.00	.....
expenses Industrial Christian Home (including \$4,000 in sundry civil act, 1892)	4,000.00	.....	4,000.00	.....	.....	.....
expenses, legislative apportionment in	1,000.00	.....	.....	.....	.....	.....
For mine inspectors (including \$2,800 in urgent deficiency act, 1892)	2,800.00	3	.....	.....	11,000.00	3
Total government in the Territories	191,400.00	49	239,510.00	46	207,600.00	44
<i>War Department.</i>						
For salaries, Secretary's Office	106,550.00	81	106,550.00	81	106,550.00	81
stationery	35,000.00	.....	64,000.00	.....	35,000.00	.....
contingent expenses	55,000.00	.....	65,000.00	.....	55,000.00	.....

rent.....	6,600.00	.....	6,600.00	.....	6,600.00	.....
postage to Postal Union countries.....	1,500.00	.....	1,500.00	.....	1,000.00	.....
For salaries, Record and Pension Division.....	1,009,390.00	859	1,009,390.00	859	1,009,390.00	859
For salaries, Adjutant-General's Office.....	212,920.00	172	212,920.00	172	212,920.00	172
For salaries, Inspector-General's Office.....	9,320.00	7	9,320.00	7	9,320.00	7
For salaries, Judge-Advocate General's Department.....	14,860.00	12	16,660.00	13	14,860.00	12
For salaries, Signal Office.....	5,700.00	5	5,700.00	5	5,700.00	5
For salaries, Quartermaster-General's Office.....	157,340.00	123	158,940.00	124	158,940.00	124
For salaries, Commissary-General's Office.....	42,760.00	36	42,760.00	36	42,760.00	36
For salaries, Surgeon-General's Office.....	177,290.00	140	186,178.00	145	184,778.00	144
For salaries, Paymaster-General's Office.....	39,160.00	28	39,160.00	28	39,160.00	28
For salaries, Chief of Ordnance's Office.....	44,860.00	36	44,860.00	36	44,860.00	36
For salaries, Chief of Engineer's Office.....	23,240.00	17	23,240.00	17	23,240.00	17
For salaries, Rebellion Records Office.....	31,780.00	26	37,220.00	32	31,780.00	26
Total War Department.....	1,973,270.00	1,542	2,029,998.00	1,555	1,981,858.00	1,547
<i>Public Buildings and Grounds.</i>						
For salaries.....	19,060.00	25	25,680.00	31	19,060.00	25
overseers, foremen, and laborers.....	30,000.00	.....	30,000.00	.....	30,000.00	.....
contingent expenses.....	500.00	.....	500.00	.....	500.00	.....
Total Public Buildings and Grounds.....	49,560.00	25	56,180.00	31	49,560.00	25
<i>State, War, and Navy Building.</i>						
For salaries.....	118,500.00	213	121,380.00	217	121,380.00	217
fuel, light, and repairs.....	42,500.00	.....	39,620.00	.....	39,620.00	.....
Total State, War, and Navy Building.....	161,000.00	213	161,000.00	217	161,000.00	217
<i>Navy Department.</i>						
For salaries, Secretary's office.....	49,160.00	32	49,160.00	32	49,160.00	32
contingent expenses.....	15,000.00	.....	15,000.00	.....	12,000.00	.....
For salaries, Bureau of Navigation.....	27,220.00	21	28,120.00	22	27,220.00	21
For salaries, Office of Naval Intelligence.....	.....	.....	1,400.00	1	.....	.....
For salaries, Office of Naval Records of the Rebellion.....	16,680.00	14	16,680.00	14	16,680.00	14
beginning publication of Naval Records.....	.....	.....	1,500.00	.....	.....	.....
For salaries, library of the Navy Department.....	2,380.00	3	2,380.00	3	2,380.00	3

Legislative, executive, and judicial bill, 1893—Continued.

Object.	Appropriations for 1892.		Estimates for 1893.		Recommended for 1893.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
<i>Navy Department—Continued.</i>						
For professional books and periodicals.....	\$1, 000. 00	.....	\$1, 000. 00	.....	\$1, 000. 00	.....
For salaries, Judge Advocate-General's Office.....	10, 660. 00	8	12, 260. 00	9	10, 660. 00	8
For salaries, Hydrographic Office.....	5, 440. 00	5	5, 440. 00	5	5, 440. 00	5
draftsmen, engravers, etc.....	40, 000. 00	.....	40, 000. 00	.....	40, 000. 00	.....
miscellaneous expenses.....	30, 000. 00	.....	31, 000. 00	.....	30, 000. 00	.....
rent, gas, repairs, etc.....	1, 500. 00	.....	1, 500. 00	.....	1, 500. 00	.....
contingent expenses of branch offices.....	13, 000. 00	.....	18, 800. 00	.....	12, 000. 00	.....
For salaries, Bureau of Equipment.....	7, 580. 00	7	7, 580. 00	7	7, 580. 00	7
For salaries, Nautical Almanac Office.....	15, 480. 00	13	15, 480. 00	13	15, 480. 00	13
pay of computers on piecework.....	9, 900. 00	.....	9, 900. 00	.....	8, 400. 00	.....
rent and fuel.....	1, 000. 00	.....	1, 000. 00	.....	1, 000. 00	.....
For salaries, Naval Observatory.....	36, 440. 00	37	38, 440. 00	40	36, 440. 00	37
contingent miscellaneous expenses.....	9, 250. 00	.....	18, 250. 00	.....	14, 700. 00	.....
For salaries, Bureau of Steam Engineering.....	11, 090. 00	9	11, 090. 00	9	11, 090. 00	9
For salaries, Bureau of Construction and Repair.....	13, 980. 00	10	13, 980. 00	10	13, 980. 00	10
For salaries, Bureau of Ordnance.....	12, 480. 00	10	13, 880. 00	11	12, 480. 00	10
For salaries, Bureau of Supplies and Accounts.....	37, 840. 00	30	40, 040. 00	32	37, 840. 00	30
For salaries, Bureau of Medicine and Surgery.....	12, 060. 00	11	12, 060. 00	11	12, 060. 00	11
For salaries, Bureau of Yards and Docks.....	10, 980. 00	8	10, 980. 00	8	10, 980. 00	8
Total Navy Department.....	390, 120. 00	218	416, 920. 00	227	390, 070. 00	218
<i>Interior Department.</i>						
For salaries, Secretary's office.....	192, 210. 00	168	231, 570. 00	166	192, 210. 00	168
expenses, special land inspectors.....	5, 000. 00	.....	5, 000. 00	.....	4, 000. 00	.....
contingent expenses.....	75, 000. 00	.....	100, 000. 00	.....	75, 000. 00	.....
stationery.....	60, 000. 00	.....	65, 000. 00	.....	50, 000. 00	.....
new books.....	500. 00	.....	500. 00	.....	500. 00	.....

rent of buildings.....	36,000.00	.....	39,500.00	.....	22,800.00	.....
postage to Postal Union countries.....	4,000.00	.....	4,000.00	.....	2,000.00	.....
biennial register.....	4,000.00	.....	.....	.....	.....	.....
For salaries, Assistant Attorney-General's office.....	40,550.00	20	40,550.00	20	40,550.00	20
For salaries, General Land Office.....	546,500.00	416	546,500.00	421	546,500.00	416
expenses of inspectors.....	10,000.00	.....	10,000.00	.....	7,000.00	.....
law books for library.....	500.00	.....	500.00	.....	500.00	.....
maps of the United States.....	14,840.00	.....	15,000.00	.....	14,840.00	.....
For salaries, Indian Office.....	107,620.00	84	111,920.00	86	107,620.00	84
per diem clerks.....	2,500.00	.....	2,500.00	.....	.....	.....
For salaries, Pension Office.....	2,296,810.00	1,859	2,296,810.00	1,859	2,296,810.00	1,859
For salaries, special examiners, Pension Office.....	210,000.00	150	210,000.00	150	210,000.00	150
expenses of special examiners and others detailed.....	215,000.00	.....	215,000.00	.....	200,000.00	.....
For salaries, Patent Office.....	692,990.00	605	762,890.00	659	692,990.00	605
scientific library.....	3,000.00	.....	5,000.00	.....	2,000.00	.....
photolithographing for Gazette.....	55,000.00	.....	55,000.00	.....	55,000.00	.....
photolithographing copies of drawings.....	100,000.00	.....	100,000.00	.....	100,000.00	.....
investigating public use of inventions.....	750.00	.....	1,000.00	.....	500.00	.....
international protection of industrial property.....	800.00	.....	800.00	.....	700.00	.....
For salaries, Bureau of Education.....	48,620.00	41	52,600.00	43	48,620.00	41
books for library.....	1,000.00	.....	1,000.00	.....	500.00	.....
collecting statistics.....	3,000.00	.....	3,000.00	.....	1,500.00	.....
distribution of documents.....	2,000.00	.....	2,000.00	.....	2,000.00	.....
publication State educational histories.....	.....	.....	20,000.00	.....	.....	.....
For salaries, Commissioner of Railroad's Office.....	14,420.00	7	14,420.00	7	14,420.00	7
traveling expenses.....	2,500.00	.....	2,500.00	.....	1,600.00	.....
For salaries, office of the Architect of the Capitol.....	19,924.00	17	19,924.00	17	20,644.00	18
For salaries, office of the Geological Survey.....	35,540.00	30	35,540.00	30	35,540.00	30
Total Department of the Interior.....	4,800,574.00	3,397	4,970,024.00	3,498	4,746,344.00	3,398
<i>Surveyors-General.</i>						
For salaries.....	35,950.00	16	42,000.00	16	35,950.00	16
clerk hire.....	82,050.00	.....	158,700.00	.....	82,050.00	.....
contingent expenses.....	23,400.00	.....	32,200.00	.....	22,100.00	.....
Total Surveyors-General.....	141,400.00	16	232,900.00	16	140,100.00	16

Legislative, executive, and judicial bill, 1893—Continued.

Object.	Appropriations for 1892.		Estimates for 1893.		Recommended for 1893.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
<i>Post-Office Department.</i>						
For salaries, Postmaster-General's office.....	\$25, 020. 00	13	\$28, 120. 00	16	\$25, 020. 00	13
For salaries, Assistant Attorney-General's office.....	12, 220. 00	8	12, 220. 00	8	12, 220. 00	8
For salaries, First Assistant Postmaster-General's office (including \$3,000 in urgent deficiency act for 1892).....	273, 840. 00	247	279, 560. 00	254	273, 840. 00	247
For salaries, Second Assistant Postmaster-General's office.....	163, 100. 00	114	165, 060. 00	116	163, 100. 00	114
For salaries, Third Assistant Postmaster-General's office.....	119, 970. 00	90	123, 770. 00	93	119, 970. 00	90
For salaries, Fourth Assistant Postmaster-General's office.....	81, 400. 00	57	85, 360. 00	60	81, 400. 00	57
For salaries, Topographer's office.....	31, 020. 00	25	31, 020. 00	25	31, 020. 00	25
For salaries, disbursing clerk's office.....	60, 760. 00	94	61, 000. 00	94	60, 760. 00	94
contingent expenses.....	58, 500. 00	.....	64, 000. 00	.....	51, 250. 00	.....
rent of buildings.....	24, 500. 00	.....	25, 500. 00	.....	23, 000. 00	.....
Official Postal Guide.....	29, 000. 00	.....	29, 000. 00	.....	15, 000. 00	.....
post-route maps.....	18, 000. 00	.....	18, 000. 00	.....	18, 000. 00	.....
postage to Postal Union countries.....	750. 00	.....	750. 00	.....	750. 00	.....
Total Post-Office Department.....	898, 080. 00	648	923, 360. 00	666	875, 330. 00	648
<i>Department of Justice.</i>						
For salaries, Attorney-General's Office.....	128, 010. 00	75	128, 510. 00	75	128, 010. 00	75
contingent expenses.....	13, 710. 00	.....	14, 050. 00	.....	12, 660. 00	.....
For salaries, court-house, Washington, D. C.....	11, 760. 00	17	12, 960. 00	19	11, 760. 00	17
For salaries, Office Solicitor of the Treasury.....	26, 680. 00	15	26, 680. 00	15	26, 680. 00	15
contingent expenses.....	750. 00	.....	750. 00	.....	750. 00	.....
For salary, warden of the jail.....	1, 800. 00	1	1, 800. 00	1	1, 800. 00	1
Total Department of Justice.....	182, 710. 00	108	184, 750. 00	110	181, 660. 00	108

Department of Labor.

For salaries	101, 020. 00	75	101, 220. 00	75	101, 020. 00	75
per diem expenses of special agents	47, 500. 00	.....	47, 500. 00	.....	47, 500. 00	.....
stationery	1, 500. 00	.....	1, 500. 00	.....	750. 00	.....
books, periodicals, etc	1, 000. 00	.....	1, 000. 00	.....	1, 000. 00	.....
postage to Postal Union countries	250. 00	.....	250. 00	.....	250. 00	.....
rent	5, 000. 00	.....	5, 000. 00	.....	5, 000. 00	.....
contingent expenses	4, 000. 00	.....	4, 000. 00	.....	3, 100. 00	.....
collection of data relating to divorces .....	.....	.....	15, 000. 00	.....	.....	.....
Total Department of Labor	160, 270. 00	75	175, 470. 00	75	158, 620. 00	75

Judicial.

Supreme Court:						
salaries, Chief Justice and associate justices	90, 500. 00	9	90, 500. 00	9	90, 500. 00	9
salary of marshal	3, 000. 00	1	3, 000. 00	1	3, 000. 00	1
salaries, stenographic clerks	14, 400. 00	9	14, 400. 00	9	14, 400. 00	9
salaries, circuit judges	60, 000. 00	10	60, 000. 00	10	60, 000. 00	10
Circuit court of appeals:						
salaries, circuit judges } \$60,000 appropriated in deficiency act, last }	60, 000. 00	9	54, 000. 00	9	54, 000. 00	9
salaries, marshals } session, for this court for 1891 and 1892. }		9	22, 500. 00	9	.....	.....
salaries, clerks		9	27, 000. 00	9	27, 000. 00	9
Court of Private Land Claims:						
salaries of justices		5	25, 000. 00	5	25, 000. 00	5
salary of clerk		1	2, 000. 00	1	2, 000. 00	1
salary of stenographer		1	1, 500. 00	1	1, 500. 00	1
salary of attorney	40, 000. 00	1	3, 500. 00	1	3, 500. 00	1
salary of interpreter		1	1, 500. 00	1	1, 500. 00	1
salaries of deputy clerks .....		.....	.....	.....	.....	.....
District courts:						
salaries, district judges	320, 000. 00	64	320, 000. 00	64	320, 000. 00	64
salary, judge of United States court in Indian Territory	3, 500. 00	1	3, 500. 00	1	3, 500. 00	1
salaries, district attorneys	20, 700. 00	72	20, 700. 00	72	20, 700. 00	72
salaries, district marshals	13, 500. 00	65	13, 500. 00	65	13, 500. 00	65
Supreme court, District of Columbia:						
salaries, chief justice and associate judges	30, 000. 00	6	30, 000. 00	6	24, 500. 00	6
Tot Judicial	655, 600. 00	273	692, 600. 00	273	664, 600. 00	264

Legislative, executive, and judicial bill, 1893—Continued.

Object.	Appropriations for 1892.		Estimates for 1893.		Recommended for 1893.	
	Amounts.	No. of salaries.	Amounts.	No. of salaries.	Amounts.	No. of salaries.
<i>Court of Claims.</i>						
For salaries	\$33,440.00	12	\$36,440.00	14	\$34,640.00	13
contingent expenses	3,000.00	.....	4,000.00	.....	3,000.00	.....
reporting decisions	1,000.00	.....	1,000.00	.....	1,000.00	.....
Total Court of Claims	37,440.00	12	41,440.00	14	38,640.00	13
Grand totals	22,141,874.75	10,705	22,754,038.05	10,893	21,683,752.05	10,634
NOTE: Total increase in amount of estimates 1893 over appropriations for 1892						
					\$612,163.30	
Net increase in number of salaries estimated 1893 over appropriations for 1892						
						188
Net decrease in amount of this bill under estimates for 1893						
					1,070,286.00	
Net decrease in number of salaries in this bill under estimates for 1893						
						259
Net reduction in amount of this bill under appropriations for 1892						
					458,122.70	
Net reduction in number of salaries in this bill under appropriations for 1892						
						71

With reference to the proposed amendment of the internal revenue laws as to gauging spirits when taken into rectifying houses, the committee call attention to the following, from a statement made by the Commissioner of Internal Revenue before the committee April 27, 1892, and to a letter from that official under date of April 29, 1892.

* * * * *

Mr. MASON. * * * When spirits of any kind are taken to a rectifying house, the gauger is required, before the package is broken, to gauge the contents of the package, and after it is, as we call it, dumped and mixed with water, or whatever matter they use to rectify, it is then taken out of the rectifying house and gauged again. The first gauging is absolutely necessary to prevent illicit spirits going to the rectifying house. There is no necessity, in my judgment, for gauging out of the rectifying house. In the first place, the spirits are so manipulated by compounds of various kinds placed in the various spirits you can not gauge accurately and show what the specific gravity is, and you have to take their word for proof, and I know of no reason why these spirits should be gauged out. That will save the gauging of several million gallons of spirits.

Mr. HENDERSON. Has not that always been the practice?

Mr. MASON. Gauging out; yes, sir.

Mr. DINGLEY. It has been regarded necessary to prevent fraud?

Mr. MASON. Of course that is the reason it has always been done. My judgment is that it need not be gauged out. The first reason is because we can not get it accurately, and in the second place when we require the rectifiers to put a stamp on the spirits showing exactly where they got them, we have thus precisely the same precaution that we have in the wholesale package.

Mr. HENDERSON. Does not the gauger, when he gauges out of a bonded warehouse or rectifying house, put a brand upon the barrel?

Mr. MASON. Yes, sir.

Mr. HENDERSON. So that no barrel would be found in the United States unbranded?

Mr. MASON. No, sir.

Mr. HENDERSON. If you abandon that, these barrels will go unbranded?

Mr. MASON. We require him to put the same stamp on it that the wholesale dealer is required. If that is practicable, and I think it is, it will save the bureau certainly a hundred thousand dollars a year?

Mr. DOCKERY. Did you make that recommendation in your annual report?

Mr. MASON. Yes, sir.

Mr. DOCKERY. I suggest you send a letter to Gen. Forney referring to the recommendation which I suppose you set out fully in your annual report, and also send to the committee the language you would like to have, in the event we determine to make such a recommendation?

Mr. MASON. Yes, sir.

Mr. HENDERSON. And state in your letter what saving it will be and how much it would cut your estimate?

Mr. DINGLEY. And state whether in your judgment it would not result in any fraud to the revenues.

Mr. HENDERSON. Is that set forth fully in your report?

Mr. MASON. Yes, sir.

Mr. HENDERSON. If there are any additional reasons I would like you to add them.

Mr. MASON. Yes, sir; I will write you pretty fully.

Mr. HENDERSON. Look carefully into that question of fraud. The original provision, I know, was to act as a guard against fraud.

Mr. MASON. Yes, sir; I have gone over it personally very carefully and I am very thoroughly satisfied about it.

Mr. HENDERSON. What is the wholesale dealer's stamp?

Mr. MASON. The wholesale dealer puts a stamp and number of the package from which the spirit contents of that were taken.

Mr. HENDERSON. The gauger has nothing to do with that?

Mr. MASON. No, sir.

Mr. HENDERSON. And he would have nothing to do with the affixing of the stamp on the rectifier's barrel?

Mr. MASON. No, sir; I would make the rectifier responsible.

Mr. HENDERSON. So, if we were to abandon the gauging out of the rectifying establishment it only increases the amount that goes out as wholesale liquor dealers?

Mr. MASON. Yes, sir. We have many ways of detecting it. The one objection particularly is the rectifier might take one barrel and make half a dozen. He would be required to put on his stamp the package from which it was taken, which we have an account of. We have an account of whisky from the time that it is manufactured until it goes into the retail dealer's hand. If he has two or three packages

which purports to have come from some original package, of course we would not know that was a fraud. Thus you see that is only cheating the customers anyway. If we are careful not to let anything get into the rectifying house except what has been taxed, it does not cheat the Government.

Mr. HENDERSON. The rectifier could, with water or acids or drugs, convert one barrel of high wines into ten barrels of whisky.

Mr. MASON. He does that now, but we take his word for the strength and certify to the trade that it is of a certain strength, but we do not know whether it is or not.

Mr. HENDERSON. Why can not the gauger tell the strength when it is diluted by the addition of acids or drugs or something else?

Mr. MASON. I should answer that some rectifying houses only mix it with water, and then we can tell the strength of that, of course. The only reason we can not tell the strength is, when they put in sugar or sirup, which changes the specific gravity. As long as there are any spirits in it, it is lighter than water, but whenever you put in sugar or sirup it is heavier than water.

Mr. HENDERSON. Have any tests been made to see what the effect is of the application of sugar and sirup?

Mr. MASON. One must make an analysis to ascertain how much there is.

Mr. HENDERSON. You can take so many gallons of pure alcohol, high wines, and rectify and guage it again and let the gauger get its strength, and then add sugar or sirup to it and see how much the specific gravity varies.

Mr. MASON. The hydrometer will not register. The hydrometer is so constituted that when put in water it floats, and when put in alcohol it stands on top, and when put in a mixture of alcohol and water it rises, and you can ascertain. But whenever you get anything into it which makes the product heavier than water, then, of course, you could not tell anything about it with the hydrometer.

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 29, 1892.

SIR: Complying with the request of the committee, I herewith inclose statements asked for.

* * * * *

I also inclose copy of a bill to which I referred when before your committee, the primary object of which is to dispense with the gauging of spirits at rectifying houses after rectification. You will observe that I have provided for the repeal of section 8 of the act of March 1, 1879, and suggest an amendment. The object of this is to provide more specially and definitely for the gauging of spirits when taken into a rectifying house, and before rectification or compounding commences. This is done now by regulation of this Bureau under the general authority conferred under said section, but as this is to be the only gauging done in a rectifying house, and is very important, I desire that the authority shall be full and complete.

The second section suggested is a modification of section 3320, Revised Statutes. The object of that is apparent. It simply omits the clause which requires the spirits to be again gauged before being taken out of the rectifying house, and requires instead thereof that the package shall be marked, branded, and stamped by the rectifier in such manner as may be prescribed by the Commissioner of Internal Revenue. More than 70,000,000 gallons of spirits have been annually gauged under this requirement of law. The question of taxation is not involved, as the spirits are all tax-paid before they enter the rectifying house. It is a mere question as to whether the spirits shall be regauged to prevent fraud on the Government. I am clearly of the opinion that it is not necessary. The gauging of 70,000,000 gallons of spirits represents 35,000 days' work for a gauger, which costs the Government \$175,000 per year. A large portion of this sum can be saved, I think, without any danger to the Government. I had the honor to recommend this change in my last report to the Hon. Secretary of the Treasury, who approved the same.

I herewith inclose clipping from my last annual report stating my recommendations and the reasons therefor.

Section 3 herein suggested will repeal section 3323, Revised Statutes. It provides instead for additional reports to be made by wholesale dealers. This I regard as of very great importance in connection with the legislation herein asked for.

If the suggestions herein made shall become law I am of the opinion that the supervision that the Government holds over the manufacture and disposal of spirituous liquors will be complete, and that the expense will be reduced to the minimum.

Should your committee desire any further information on the subjects above referred to I shall take great pleasure in imparting all within my knowledge.

* * * * *

Very respectfully,

Hon. W. H. FORNEY,
House of Representatives.

JOHN W. MASON,
Commissioner.

The committee also direct attention to the following letter from the Secretary of the Interior with reference to section 3 of the bill:

DEPARTMENT OF THE INTERIOR,
Washington, March 24, 1892.

SIR: In view of certain decisions of the Court of Claims, holding that the employés who brought the suits under consideration were entitled to their regular compensation during the full period of absence due to sickness, notwithstanding rules of the Departments in which they were employed limiting sick leave with pay to a definite number of days in any one year, I have the honor to bring the subject of sick leave to your attention, and would quote in this connection from the act of Congress approved March 3, 1883, "making appropriations for the legislative, executive, and judicial expenses of the Government * * * (22 Statutes at Large, pp. 531-563):

"SEC. 4. That hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employés, of whatever grade or class, in their respective Departments not less than seven hours of labor each day, except Sundays and days declared public holidays by law or executive order: *Provided*, That the heads of the Departments may, by special order stating the reason, further extend or limit the hours of service of any clerk or employé in their Departments, respectively, but in case of an extension it shall be without additional compensation, and all absence from the Departments on the part of said clerks or other employés in excess of such leave of absence as may be granted by the heads thereof, which shall not exceed thirty days in any one year, except in case of sickness, shall be without pay."

The theory of the court, in its decisions of the nature mentioned since the date of the act above quoted from, seems to rest upon the fact that the last clause of said section makes an exception to the length of time that an employé may be absent from official duty because of sickness in any one year, and does not provide that in such cases absence shall be without pay.

There seems to be two methods by which the Executive Departments can be protected from being required to pay employés for time lost—at least, for long periods—on account of sickness, viz:

(1) By dismissing such employés after the annual allowance of thirty days' leave with pay has been consumed, together with the number of days which the regulation of the Department may have fixed as the limit of sick leave with pay.

(2) By legislation.

In the Department of the Interior the limit of sick leave with pay has for several years past been fixed by regulation at thirty days in any one year, and absence in excess of that limit and the thirty days of "annual" leave allowed by the act of March 3, 1883, is ordered to be without pay.

Among the several thousand employés of this Department a considerable number in each year are absent longer, in the aggregate of their individual absences, than the sixty days which the regulations of this Department allow with pay. To summarily dismiss an employé at the expiration of the limit above explained, had he not then returned to duty, would unquestionably operate harshly and unjustly in many cases. Under the act of March 3, 1883, there is no limit to the time an employé may be absent in case of sickness and still be entitled to pay, and there is no other law which imposes a limit in such cases. In fact, there is no protection afforded the Government from being obliged to grant demands, often involving several hundred dollars, for compensation during a period when no service was rendered by the employé who makes the demand.

The fact that Congress has by law provided for thirty days "annual" leave to employés in the Departments and has recognized their right to sick leave, precludes the assumption that they should be deprived of pay when absent because of sickness; but as a limit has been set for absence not due to sickness it would seem that it might be appropriate to fix a reasonable limit for sick leave with pay whereby complications could be averted as well as the payment of salaries beyond a certain limit, when no service was rendered in return by the employé.

I have, therefore, the honor to suggest that the act of March 3, 1883, herein referred to, be amended by the insertion in the legislative, executive, and judicial bill for the next fiscal year of the following section:

"That hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employés, of whatever grade or class, in their respective Departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law, or executive order: *Provided*, That the heads of the Departments may, by special order stating the reason, further extend or limit the hours of service of any clerk or employé in their Departments, respectively, but in case of an extension it shall be without additional compensation: *And provided further*, That the Secretary of any

department may grant thirty days' annual and thirty days' sick leave with pay in any one year to each clerk or employé, the sick leave to be allowed in cases of personal illness only, or where some member of the immediate family is afflicted with a contagious disease and requires the care and attendance of such employé, or where his or her presence in the Department would jeopardize the health of fellow-clerks: *And be it further provided*, That in exceptional and meritorious cases, where to limit such sick leave would work peculiar hardship, it may be extended in the discretion of the Secretary, with pay, not to exceed one hundred and twenty days in any one case or in any one calendar year.

"This section shall not be construed to mean that so long as a clerk or employé is borne upon the rolls of the Department in excess of the time herein provided for, or granted, that he or she shall be entitled to pay during the period of such excessive absence, but that the pay shall stop upon the expiration of the granted leave."

A definite law concerning sick leave will simplify this subject, which has long been a vexed one and regarding which the regulations of the different Departments are not uniform. Legislation in this respect seems highly desirable, and the amendment herein proposed is commended to your early consideration.

For your convenience a copy of the proposed section is inclosed herewith on a separate sheet.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The CHAIRMAN OF THE COMMITTEE ON APPROPRIATIONS,
House of Representatives.

O

PROCLAMATION RELATIVE TO OBSERVANCE OF FOUR HUNDREDTH
ANNIVERSARY OF THE DISCOVERY OF AMERICA.

MAY 28, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. DURBOROW, from the Select Committee on the Columbian Exposition, submitted the following

REPORT:

[To accompany H. Res. 136.]

The Select Committee on the Columbian Exposition, to whom was referred House bill 3620 and House joint resolution 125, report and recommend the passage of the accompanying substitute joint resolution, and that bill H. R. 3620 and joint resolution H. Res. 125 be laid on the table.



PUBLIC BUILDING AT DECATUR, ILL.

MAY 28, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. NEWBERRY, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany H. R. 87.]

The Committee on Public Buildings and Grounds, to whom was referred House bill 87, respectfully report that they find Decatur, Ill., to be a city of 16,841 inhabitants in 1890, showing a growth in ten years of 76 per cent. Its growth is of a permanent and stable character. About 25,000 people are served from this post-office. Railroads carry mail in twelve directions from Decatur. The gross receipts for the year ending June 30, 1891, from the Decatur post-office, were \$34,264.59. The net receipts were \$19,084 for the same period. The receipts have increased largely since the close of the last fiscal year. Rent paid, \$900, but will be largely increased when present lease expires.

The committee recommend the passage of the bill with the following amendments:

In line 12 strike out "one hundred" and insert "fifty;" also, in line 21 strike out "one hundred" and insert "fifty."

JOHN L. BROOME.

MAY 28, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. McALEER, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 1072.]

The Committee on Naval Affairs, to whom was referred the bills (H. R. 1072 and 4287) for the relief of John L. Broome, having duly considered the same, submit the following report:

The facts in this case are as follows:

On the 24th day of January, 1865, an act of Congress to provide for an advance of rank to officers of the Navy and Marine Corps for distinguished merit was approved by the President of the United States, and therefore became a law of the United States, in the following words and figures, to wit (Stat. L., Vol. 13, 1863-'65, p. 424; January 24, 1865):

AN ACT to provide for an advance of rank to officers of the Navy and Marine Corps for distinguished merit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any officer of the Navy or Marine Corps, by and with the advice and consent of the Senate, may be advanced, not exceeding thirty numbers in rank, for having exhibited eminent and conspicuous conduct in battle or extraordinary heroism.

SEC. 2. *And be it further enacted,* That any officer of the Navy or Marine Corps, either of volunteers or others, who shall be nominated to a higher grade by the provisions of the first section of this act, or of that of section 9 of an act entitled "An act to establish and equalize the grades of line officers of the United States Navy," approved July 16, 1862, shall be promoted notwithstanding the number of said grade may be full; but no further promotion shall take place in that grade, except for like cause, until the number is reduced to that provided by law.

SEC. 3. *And be it further enacted,* That all acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

For the purpose of carrying into effect the above-recited act of Congress with intelligent and just discrimination, the honorable Secretary of the Navy organized a board of naval officers of the highest rank to take into consideration the purposes of said act of Congress and report to him the names of those officers of the Navy and Marine Corps who had exhibited eminent and conspicuous conduct in battle or extraordinary heroism. The board so ordered consisted of Vice-Admiral D. G. Farragut, Rear-Admiral Charles H. Davis, Rear-Admiral John A. Dahlgren, and Rear-Admiral David D. Porter.

This board convened at the Navy Department, Washington, on or about January 24, 1866, and after a session of about seven days, during which time the board, engaged in obedience to the orders they had received from the honorable Secretary of the Navy, made an official report

in writing to the honorable Secretary of the Navy, dated on or about the 30th of January, 1866, recommending by name a number of officers of the naval service of the United States for advancement. After the report of the aforesaid naval board was made a large number of naval officers received promotion by advancement, but not one officer of the U. S. Marine Corps was advanced or promoted a single number.

The proceedings of this board of admirals were not made public or promulgated by the then Secretary of the Navy, the Hon. Gideon Welles; and when Mr. Welles ceased to be Secretary of the Navy and left the Navy Department he took the proceedings and report of the said board with him to his home in Hartford, Conn.; and when the Hon. G. M. Robeson became Secretary of the Navy he wrote to Mr. Welles, requesting him to send the report of the board of admirals to the Navy Department, which Mr. Welles declined to do.

Nearly twenty years after, Lieut. Col. Broome received in a letter from Mr. Welles, son of the late Secretary Welles, a copy of the action of the board of admirals in his case, recommending him for advancement to the rank of junior colonel in the U. S. Marine Corps, for conspicuous and meritorious conduct in battle; and in confirmation of this information from Mr. Welles the following letter was written by the Admiral of the Navy:

OFFICE OF THE ADMIRAL,
Washington, D. C., January 13, 1888.

To whom it may concern:

This is to certify that Lieut. Col. John L. Broome, U. S. Marine Corps, was recommended for promotion by the board of admirals, of which board I am the only surviving member, said board having been convened to recommend the promotion of officers for gallant conduct during the late war.

Col. Broome, then the junior major of the Marine Corps, was particularly recommended to the board for promotion by Admiral Farragut for bravery and highly meritorious services in battle, and the board recommended that he should be promoted to No. 1, lieutenant-colonel for New Orleans and the Mississippi River. In consideration of the circumstances of his case, I consider that Lieut. Col. Broome should be retired with the rank of colonel. Admiral Farragut always spoke of Col. Broome in the highest terms, and desired that he should be promoted, and although Col. Broome never served with me in battle, yet I consider it is but just that promotion should be given him.

DAVID D. PORTER,
Admiral, U. S. Navy.

It is thus shown that if Lieut. Col. Broome had received the promotion awarded to him by virtue of the act of Congress herein referred to, he would have been retired as a colonel, instead of a lieutenant-colonel, in March, 1888.

Many other reasons why this bill should pass will be suggested to anyone who reads the record of this officer's long and faithful service in the Marine Corps.

The committee recommend that the bill H. R. 4287 (of similar import) be laid on the table, and request the passage of the bill H. R. 1072.

PROTECTION OF INDIAN TRIBES FROM TRESPASSERS.

MAY 31, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. ENGLISH, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 9053.]

The Committee on Indian Affairs, to whom was referred House bill 6799, beg leave to report:

The evident intent of the bill was to obtain additional protection for the Indian tribes in possession, either through existing or future treaties, from trespassers who without color of title, either from said tribes or the United States, enter on such land for the purpose of settlement. It appears that on the land of the Chickasaw Nation, especially, there are several thousands of trespassers who defy removal. It is true that section 2118 of the Revised Statutes (act of June 30, 1834, Vol. IV, Stat. L., p. 703) provides a penalty for such trespass by fine, and directs the removal of such trespassers by the United States troops; but such remedy has proved to be ineffectual because of the poverty of the offenders.

The committee, while conceding the necessity of additional legislation in the premises, providing for a more efficient penalty, do not approve of the bill in the form it assumes, since it leaves no discretion in the court to grade the punishment of offenders, and does not define the offense with sufficient precision. They therefore submit as a substitute the accompanying bill, in which those defects are sought to be remedied, and recommend its passage.

○

PROSECUTION OF PENSION AND OTHER CLAIMS.

MAY 31, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. SNOW, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 6881.]

The Committee on Invalid Pensions have considered the bill (H. R. 6881) to expedite the prosecution of pension and other claims arising out of the military and naval service of the United States of America, and submit the following report:

The object aimed at by the first and third sections of this bill is simply to permit any claimant, under the laws of the United States, growing out of military or naval service, to acquaint himself, through the proper channels, with all the evidence bearing on such claim, whether favorable or adverse, to the end that he may be fully advised as to the best methods of prosecuting his claim, and of rebutting any adverse evidence that may be presented; in short, to make the whole proceeding open, public, and accessible, following the analogy of suits in the courts of the country. It is respectfully submitted that any departure from this system is un-American and liable to abuse.

Your committee return the bill with the recommendation that it be amended by striking out the word "memoranda" in line 7 of the first section, and inserting in lieu thereof the word "memorandum," and by striking out all of sections 2 and 4, and as thus amended your committee recommend that the bill do pass.

○

MAUD CASE.

MAY 31, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HARRIES, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7306.]

The Committee on Invalid Pensions have considered the bill (H. R. 7306) granting a pension to Maud Case, and submit the following report:

The petitioner is the daughter of Hezekiah Case, who served in Company H, Thirty-third Wisconsin Infantry, from August 21, 1862, to August 9, 1865, and died November 14, 1880, from diseases which the Pension Bureau has accepted as due to his military service.

Two children of the soldier were pensioned until each became 16 years of age; of these Edith Maud, the younger, became 16 years of age August 16, 1886, since which date no pension has been paid. It is shown by testimony of Dr. S. W. Ransom, S. P. Kinney, and Samantha Kinney, of Dodge Center, Minn., that the petitioner is totally blind, and has been so from her birth, and also that she has no property whatever, and is dependent upon others for her support.

Your committee return the bill with the recommendation that it do pass.

○

AMELIA R. WEBSTER.

MAY 31, 1892.—Indefinitely postponed and ordered to be printed.

Mr. SNOW, from the Committee on Invalid Pensions, submitted the following

ADVERSE REPORT:

[To accompany S. 1489.]

The Committee on Invalid Pensions have considered the bill (S. 1489) passed by the Senate May 10, 1892, granting a pension of \$30 per month to Amelia R. Webster, and submit the following report:

The petitioner is the widow of John A. Webster, jr., who served in the Revenue-Cutter Service of the United States from November 17, 1842, to April 6, 1875, when he died, being still in that service; he held successively the ranks of third, second, and first lieutenant and captain, and that he rendered gallant service there can be no doubt; he was not, however, in the Army or Navy of the United States; it is not alleged that he was wounded or injured in battle, and as the general laws do not grant pensions to men in the Revenue-Marine Service nor to their widows, no sufficient reason appears why an exception should be made of this case.

Your committee recommend that further consideration of this bill be indefinitely postponed.

RALPH WALDO NASON.

MAY 31, 1892.—Indefinitely postponed and ordered to be printed.

Mr. MCKINNEY, from the Committee on Invalid Pensions, submitted the following

ADVERSE REPORT:

[To accompany S. 372.]

The Committee on Invalid Pensions have considered the bill (S. 372) passed by the Senate March 22, 1892, granting a pension of \$18 per month to Ralph Waldo Nason, and submit the following report:

The beneficiary of this bill is the son of Lewis C. Nason, who served in Company A, First Wisconsin Volunteers, and died February 19, 1864. The son is 30 years of age and hopelessly insane. He has been an inmate of Vermont asylum for the insane since 1883, and is pronounced by the superintendent incurable. It does not appear in what way this pension, if allowed, would inure to the benefit of the party named, and, moreover, the widow of the soldier is in receipt of a pension of \$12 per month under the general law.

To pass this bill would result in the allowance of two pensions on account of the death of one soldier, and your committee therefore recommend that its further consideration be indefinitely postponed.

JAMES MORRISON, ALIAS JAMES C. MACKINTOSH.

MAY 31, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LODGE, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 1479.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 1479) to remove the charge of desertion from the record of James Morrison, alias James C. Mackintosh, having duly considered the same, adopt their report made on a similar bill at the first session of the Fifty-first Congress, which report is herewith appended and made a part of this report, with the recommendation that the bill do pass.

[House Report No. 2221, Fifty-first Congress, first session.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 9370) to remove the charge of desertion from the record of James Morrison, alias James C. Mackintosh, having duly considered the same, beg leave to report it back with the recommendation that the same do pass.

It appears from an examination of the facts in the case that James C. Mackintosh enlisted as a seaman in the United States naval service June 22, 1843, and served with credit on the U. S. S. *Ohio*, *Cumberland*, and *Franklin* to the close of the Mexican war, when, his term of enlistment having nearly expired, he was transferred to the storeship *Lexington*, and while attached to that vessel was doing shore duty at Monterey, Mexico.

In the meantime the gold excitement broke out in California, and he with seven other of his comrades were persuaded to leave for the "diggins." The mark of desertion was accordingly entered against his name on the rolls of the U. S. S. *Lexington*, October 22, 1848. Returning to New York in 1853 he again reënlisted, under his right name of James C. Mackintosh, serving faithfully on the *North Carolina*, *Constitution*, and the *Portsmouth*. He was subsequently employed by the Ordnance Department at the Portsmouth (N. H.) navy-yard until the outbreak of the war, when he enlisted on the *Octorara*. He was successively promoted as a petty officer, as a coxswain, and gunners' mate, and at the battle of Mobile Bay was severely wounded in the head while at the wheel.

On recovering from his wound he successively reënlisted again up to the year 1872, when he received an appointment as a watchman in the Boston navy-yard. The gallant Admiral C. R. P. Rogers, who was at that time the Chief of the Bureau of Yards and Docks, spoke of him as follows:

BUREAU OF YARDS AND DOCKS,
December 5, 1872.

I have served with James Mackintosh during three cruises, one when he was a boy and twice as a petty officer. I beg leave to recommend him very strongly for employment at our navy-yard. Such faithful seamen well deserve the consideration of naval officers.

C. R. P. ROGERS,
Chief of Bureau.

Mackintosh is still in the naval service, and was recently on duty on board the U. S. S. *Galena*. In view of his many years of faithful performance of duty, it seems to your committee that it will be but an act of simple justice to give him the relief asked for.

JUDGE BOARMAN.

JUNE 1, 1892.—Laid on the table and ordered to be printed.

Mr. OATES, from the Committee on the Judiciary, submitted the following

ADVERSE REPORT:

The Committee on the Judiciary submit the following report upon the proposed impeachment of Judge Aleck Boarman, of the United States district court for the western district of Louisiana.

On the 31st day of January, 1892, the House of Representatives adopted the following preamble and resolutions, to wit:

Whereas Aleck Boarman, judge of the United States district court for the western district of the State of Louisiana, was charged in the House of Representatives of the Fifty-first Congress with high crimes and misdemeanors, alleged to have been committed by him as such judge; and

Whereas the Committee on the Judiciary, under the authority of said House, investigated the alleged official misconduct in office of the said judge, and took a considerable volume of testimony thereon, both against said judge and for him, he being present in person or by his counsel whenever and wherever the said testimony was taken; and

Whereas upon due consideration thereof the said committee reported a resolution to the said House of Representatives, declaring that said Judge Boarman should be impeached of high crimes and misdemeanors in office, and accompanying the said resolution was the evidence upon which the same was based, which was duly printed under the direction of said committee, and by order of the House; and

Whereas the said resolution never came to a vote, and hence never was adopted by said House, for the lack of time to duly consider the same: Therefore

Be it resolved, That the said report, charges, and evidence be referred to the Committee on the Judiciary, with instructions to thoroughly investigate the same, and to report to the House the findings and recommendations in regard thereto at any time.

And for the purpose of making the investigation hereby ordered the said Committee on the Judiciary may adopt and use as legal evidence the testimony taken as aforesaid during the Fifty-first Congress in the case of Judge Boarman, and may take and consider any additional or explanatory evidence of a legal character which may be offered either for or against the said judge, and in respect to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer if necessary; to send a subcommittee whenever and wherever deemed necessary to take testimony for the use of said committee; and the said subcommittee while so employed shall have the same powers in respect to taking testimony as are herein given to said Committee on the Judiciary; that the Sergeant-at-Arms, by himself or deputy, shall serve the process of said committee and subcommittee and execute its orders, and shall attend the sittings of the same as ordered and directed thereby; and that the expenses of such investigation shall be paid out of the contingent fund of the House.

The chairman of the Committee on the Judiciary designated the following special subcommittee, to wit: Mr. Oates, of Alabama; Mr. Bynum, of Indiana; Mr. Buchanan, of Virginia; Mr. E. B. Taylor, of Ohio, and Mr. Powers, of Vermont, to investigate the charges, take testimony, and report to the full committee their findings, which they did.

Your committee found it unnecessary to take any additional testimony after having adopted that taken by its predecessor in the Fifty-first Congress. Upon due inquiry it was found that there were no other witnesses to be examined in behalf of the Government touching the said charges, and thereupon the said judge was notified that if he had any exculpatory or explanatory evidence which he wished to offer that he should have the opportunity of doing so. He then came to Washington, appeared before said special subcommittee, and gave his testimony, which appears with the other testimony accompanying this report.

The committee found that the evidence did not sustain the charges numbered 1, 3, 5, 6, and the eighth or general charge. They investigated the charges numbered 2, 4, and 7, and one not hitherto formulated, substantially as follows:

First—That the said judge usurped jurisdiction in the case of *M. C. Elstner vs. The heirs of Goldkin*, the plaintiff being his nephew by marriage, and, corruptly extorting from an unwilling jury a verdict in favor of said plaintiff, notwithstanding the cause or matter in controversy had been passed upon, adjudged, and determined by a competent State tribunal, to wit, the district court of Caddo Parish, La., which said judgment was final, and that in said cause the said judge had refused to hear arguments and had arbitrarily and corruptly ruled in favor of the plaintiff, his relative, as aforesaid.

Second—That in a certain proceeding, instituted by the United States district attorney against one John R. Jones, to recover a penalty for unlawfully trespassing upon lands of the Government, cutting the timber therefrom and appropriating the same to his own use, and the said Jones being or having been an accommodation acceptor of the paper of said judge and his warm personal friend, that the said judge corruptly ruled on the trial of said cause in favor of said Jones, and refused to hear an argument of able counsel who had been employed by the Department of Justice to prosecute the said cause, and that the said judge also corruptly caused said Jones to be acquitted of said charge as well as of an indictment found by a grand jury therefor.

Third—That in an application of one Neil Macdonald for the appointment of a receiver for the Shreveport and Houston Railway Company, and pending an application to same effect made by the Union Trust Company in behalf of the bondholders of said road, which last application was returnable before Judge Pardee, at Huntsville, Ala., the said judge having stipulated with the representative of Neil Macdonald for the appointment of A. H. Leonard and M. C. Elstner as attorneys for the receiver, and by reason thereof anticipated the proceedings pending before Judge Pardee by appointing as receiver the person suggested by Neil Macdonald's counsel, who thereupon employed as his counsel the said Leonard and Elstner, though prior thereto the services of another counsel had been provisionally engaged; and it is charged that the foregoing was a corrupt abuse of his judicial authority to promote the personal and professional interest of his personal friend and associate, Albert H. Leonard, and his relative, M. C. Elstner.

Fourth—That said judge has used for his own purposes the funds paid into the registry of his court, and has unlawfully and corruptly failed and refused to decide causes in which the funds in dispute were, or should have been, in the registry of his court, and also that the respondent repeatedly borrowed money from the marshal of his court contrary to law.

1. The first of these four charges is an arraignment of Judge Boarman on his rulings in a suit which originated as follows:

Nathan Goldkin was murdered, and his administrator—curator, as designated by the laws of Louisiana—employed M. C. Elstner, who is a lawyer of ability, to prosecute the murderer. About the time when Elstner undertook said prosecution he was notified by the heirs at law of Goldkin, who were nonresidents of the State, that they did not wish his services; that the State prosecuting attorney was sufficient for that purpose, and he would attend to it; but, notwithstanding this admonition, Elstner continued in the prosecution and the murderer was convicted. When the estate was ready for final settlement the curator filed in the county court a tableau of distribution, showing the assets in his hands and the debts and expenses he proposed to pay, and the amount left for division and distribution among the heirs at law. Among these items, he proposed to pay said Elstner for his legal services \$1,000.

The heirs at law, who were represented by counsel, objected to this item upon the ground that the curator could not fix any liability upon the estate of his intestate by any assumpsit of his, and upon the further ground that the services of said Elstner were unnecessary. A reply was made by said Elstner that a statute of Louisiana required the heirs at law to denounce and prosecute the murderer of their ancestor or person from whom they inherit, and failing in this duty they shall lose the inheritance or be liable for such charge. Judge Taylor, of the county or district court, sustained the defense of the heirs at law and refused to allow the curator to pay the claim of said Elstner. Thereafter, while the funds still remained in the hands of the curator, said Elstner began a suit by attachment in the State court against the heirs as nonresidents, and served the same by garnishment of the funds in the hands of the curator. Elstner subsequently transferred his case into the United States court.

On the hearing in said court, the record of the proceedings in the State court was introduced in evidence, and it was there insisted that the case was *res adjudicata*, and before the trial was completed the defendants filed a plea or request for the recusation of the judge, raising an objection to his competency to proceed in said cause on account of his relationship to the plaintiff. The judge denies that this objection was in writing or formally filed, but the record shows that it was.

Your committee does not think the said judge holding the United States circuit court usurped jurisdiction in this case, because the non-residency of the parties defendant was ground for the bringing of the suit in the State court, and also for its transfer into the United States court. It had the appearance of sharp practice upon the part of Mr. Elstner, but the court, as the law then stood, evidently had jurisdiction. The parties defendant appeared by counsel and did not file a plea to the jurisdiction.

As to the question of former adjudication, which seems to have been the chief ground of defense, the subject-matter was in controversy in the State court, and all the parties were connected with the litigation in that court, but Judge Taylor held that the question raised by Mr. Elstner's replication could not be adjudged in that case and between the parties thereto. This being true, the jurisdiction of the United States court was complete and the plea of former adjudication was not available.

There was no statute of the United States which required Judge Boarman, on account of his relationship to the plaintiff, to refuse to

try said cause, although a sense of judicial propriety, and to avoid even the appearance of bias or unfairness, should have caused him to decline to hear the case, if that objection had been made at the time the parties were entering upon the trial. But the record shows that it was not interposed until a later stage in the proceedings; in fact after the jury had returned their verdict, and coming thus late, the defendants may well have been regarded as having waived that objection even if it had been an available one when made. All statutes of States declaring a judge ineligible to preside in cases wherein interested or related to the parties require the objection to be brought to the attention of the court before or at the time of entering on the trial.

2. The facts upon which the second charge is based are substantially that one John R. Jones, a mill man of considerable means, entered a large quantity of timber lands at the local land office at Nachitoches at \$1.25 per acre, and began at once cutting therefrom and using the timber. When the entry was returned to the General Land Office, the local officials were notified that the land being alternate reserved sections in a railroad grant, were held by the Government for sale at \$2.50 per acre, and that Mr. Jones should be notified that he could pay the additional \$1.25 per acre and perfect his entry, or the same would be canceled. Jones was notified when he had taken only a part of the timber, but he declined to pay the additional sum, and after denuding the land of its timber, which constituted its chief value, he allowed his entry to be canceled, and applied for the refund of his money, which he obtained, the General Land Office requiring him to execute a quitclaim deed as a part of the transaction, which is the uniform practice of the General Land Office at Washington in all cases of cancellation.

When the district attorney at Shreveport learned how Jones had denuded the land of its timber, he instituted suit in the United States court to recover the penalties provided by the statute in such cases, and also presented the case to the grand jury, who found a bill of indictment against said Jones for unlawfully trespassing upon said land.

The Department of Justice was informed of the facts, and thereupon the Attorney-General employed able counsel to assist the district attorney in the prosecution of said Jones. Upon the hearing Judge Boarman refused to hear the assistant counsel thus employed in argument, but limited the argument to the district attorney, and heard him with considerable impatience and interruptions. The said Judge charged the jury that there could be no question of bad faith on the part of Mr. Jones; that no collusion had been shown between him and the local land officers in the sale to him of the land at \$1.25 per acre, and that unless that was shown, he having color of title under his purchase, that there could be no question of bad faith, and also charged the jury that the quitclaim deed which he executed was an estoppel of the Government from recovering against said Jones. Substantially the same charges were given in the criminal case, and Jones was acquitted. Judge Boarman claims to have decided a similar case in Texas some two months previously, and that this was the reason he refused to hear argument.

We think that the rulings of the judge were erroneous, and that his conduct in refusing to hear counsel employed for the prosecution of the case in argument was reprehensible. It is alleged that these rulings by the judge were influenced by the fact that Jones was his friend and accommodation acceptor upon his paper. If this be true, his conduct in this case was influenced by corrupt motives, and he would deserve **impeachment**; but the evidence fails to show that at the time the cases

were tried Jones was his surety, and though the circumstances raise a suspicion of undue influence, the evidence does not establish the corrupt motive alleged.

Inasmuch as the record shows that a writ of error has been taken to the Supreme Court of the United States in the case by the district attorney, and the same is still undecided, we refrain from further comment upon the rulings of the judge in this case.

3. The question raised by the third charge is, substantially, whether or not Judge Boarman took jurisdiction of the proceeding mentioned therein and appointed a receiver for the corrupt purpose of promoting the personal interest of his friend, Albert A. Leonard, and his relative, M. C. Elstner. It must be admitted that Judge Boarman, acting as circuit judge, had jurisdiction to do just what he did in the appointment of a receiver. It is apparent from the evidence that the application of the Union Trust Company to Judge Pardee, the circuit judge, for the appointment of a receiver of the same corporation was prior in time, and had been made to the circuit judge, who had named a date and place when and where he would hear the said application. Neil Macdonald employed his attorney, and subsequently to the application by the Union Trust Company to Judge Pardee, he presented the bill in equity of said Macdonald to Judge Boarman, who set for the hearing an earlier date than that which had been fixed by Judge Pardee for the hearing of the application of the Union Trust Company.

On the day which Judge Boarman set to hear the application of Macdonald, Mr. Farrer, one of the counsel for the said Union Trust Company, wrote a letter which was presented to Judge Boarman before he made any order in said cause, notifying him that Circuit Judge Pardee had taken jurisdiction and fixed a date for the hearing, and protested against any action by Judge Boarman; but, notwithstanding this information and protest against his action, Judge Boarman proceeded to make the order appointing a receiver, who did employ Messrs. Leonard and Elstner as his attorneys. It was a piece of sharp practice on the part of Macdonald's attorneys to get in ahead of the Union Trust Company, and while Judge Boarman acted within his jurisdiction his conduct was not quite respectful to Circuit Judge Pardee. It was a scramble between the lawyers for precedence, and the mere fact that Leonard was appointed the receiver's counsel, and that Judge Boarman suggested and advised it, shows that he wished Leonard and Elstner to have the job, but does not prove that he did it corruptly. Judge Pardee soon after went to Shreveport, opened the circuit court, and removed the receiver appointed by Judge Boarman and appointed another.

4. The fourth charge is double, and contains two serious charges against Judge Boarman.

The gravamen of the first is that he converted to his own use funds in the registry of his court, and "unlawfully failed and refused to decide causes in which the funds in dispute were, or should have been, in the registry of his court."

The second is, that he borrowed money repeatedly from the marshals of the court, contrary to law; that is, that he borrowed of them money which belonged to the Government. The proof shows conclusively that he has been in the habit of borrowing money in amounts ranging from \$100 to \$300 from the marshals of his court, and that at least a part of the money so loaned belonged to the Government; but neither of the marshals swear that they ever so informed the judge at the time of the loans. They also testified that they were influenced to thus accommodate

him by a knowledge of the fact that he had the power to enlarge or diminish their fees, and that they feared that if they denied him the loan it might offend him and cause a diminution of their allowances. This does not speak very well for the judge, nor the opinion which the marshals had of him; but as there is no testimony showing that he knew at any time when he borrowed money that it was the money of the Government, and in his own testimony he denies any such knowledge, the second branch of the charge is not sustained by the proof.

In respect to the first part of the charge, it is proven by the judge's own testimony that at one time when he visited Mr. Wheaton, the clerk of his court, when the latter was sick and unable to attend to business, that said Wheaton gave him an order to Utz & Smith, hardware merchants in Shreveport, with whom said clerk, Wheaton, kept his deposits, for \$471, saying to the judge at the time that he (Wheaton) expected to die, and that this was money which belonged in the registry of the court, which he had deposited in his individual name, and he did not wish it to go into his succession or estate. The judge went to Utz & Smith and drew the money and kept it in his possession or under his control. The judge swore that he did not think that he used any of it, but declined to say that he did not. He admitted that he may have used some of it; that upon a subsequent visit to said Wheaton the latter gave him another order on the same parties for \$600, which he also obtained; that he never used any of the latter, but kept it within his control for eight or nine months, and then turned over all that he received from Wheaton to Mr. Beattie, the successor to Wheaton, in March, 1889; that if he used any of the \$400 he replaced that amount in lieu of the original money received by him, but is not certain that he used any of it. Mr. Beattie swears that the amount turned over to him by Judge Boarman was \$1,100. There is a slight discrepancy between the aggregate of the amounts received by the judge and that turned over to Beattie, the latter exceeding the former about \$29.

Section 5505 of the Revised Statutes provides that—

Every person who knowingly receives from a clerk or other officer of a court of the United States any money belonging in the registry of such court, as a deposit, loan, or otherwise, is guilty of embezzlement, and shall be punished as prescribed in the preceding section.

And the preceding section prescribes a fine of not less than \$500 and imprisonment not less than one nor more than ten years, or by both such fine and imprisonment.

It will be seen in his testimony that the judge claims to have been entirely ignorant of the existence of this statute. He says that it looks like a humiliating confession for a judge to make, and the committee agrees with him in that statement. *Ignorantia legis non excusat* is a maxim of the law, applicable alike to the ignorant and the learned. It can not, therefore, be taken as any excuse whatever for his conduct in this case. He is, by his own confession, technically guilty of embezzlement. There are, however, extenuating circumstances. Wheaton, the clerk, was upon his deathbed when he gave the judge the orders upon Utz & Smith for this money. He told the judge that he was going to die, and that this money belonged in the registry of the court, and he did not wish it to go into his succession or estate.

The judge swears that his motive in receiving the money was to preserve it unincumbered for the suitors who would be entitled to it when the distribution was decreed; and while he admits that he may have converted a part of it to his own use, if he did he replaced it with the

new clerk, and thus those who were entitled to it received their money. While, therefore, the taking of the money by the judge was a statutory embezzlement, it can not be said, from the evidence, that he took it *lucri causâ*, or with dishonest intent.

The charge against him is not alone that he received and used for his own purposes funds belonging in the registry of his court, but that he "unlawfully and corruptly failed and refused to decide causes in which the funds in dispute were, or should have been, in the registry of his court."

The committee does not think that this latter part of the charge is sustained by the evidence. There was some delay, it is true, in the rendition of the decrees and the distribution of the money, but we can not say that these delays were to enable him to use the money, nor, indeed, that they were much greater than is usual and deemed necessary for the disposition of such matters. There was considerable delay in the rendition of the consent decree and payment of the money due to the parties in the matter of the proceeds of the steamboat *Parisot* in the court at Monroe, but Judge Boarman swears positively that he never borrowed, used, or had control of any portion of that money, and there is no direct evidence that he did.

This disposes of all the charges against him. It is the deliberate judgment of the committee that while Judge Boarman's conduct touching several matters complained of is not free from criticism and censure, nor has it been of a character calculated to inspire that high confidence in his integrity, impartiality, and fairness in the administration of justice which a judge should maintain in the estimation of the members of the bar who practice before him, and the people at large wheresoever he holds courts, yet we fail to find that he has been influenced by corrupt or dishonest motives, and therefore we recommend that no further proceedings be taken against him, and that the committee be discharged from the further investigation of the said charges.

All of the evidence taken touching the several charges against him in the Fifty-first Congress has been rearranged and put into an orderly shape, which, with the evidence of Judge Boarman taken by this committee, is herewith reported to the House, which the committee requests shall be laid upon the table and printed to accompany this report.

Hon. C. J. Boatner, now a member of this committee, having preferred the charges against Judge Boarman in the Fifty-first Congress, declined to vote on any of the propositions embraced in the foregoing report.

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FIRST CHARGE AND ANSWER.

- E. H. RANDOLPH's** testimony: Attorney for city in case of Leonard *vs.* City. Suit for \$3,500; attorney's fees; pleading in case fully stated; first trial verdict for defendant; verdict set aside. Second trial: History of case and cause out of which it was given; judge's exclusion of evidence and instructions to jury; jury held in jury-room afternoon, night, next day, and night; does not think proper opportunity allowed city to make defense; action of court caused comment; opinion as to whether case fairly and judicially tried; does not think it untrammelled verdict; legal contention of plaintiff stated (p. 12).
- T. ALEXANDER's** testimony: Counsel for city when suit instituted on bonds of Shreveport by Leonard; recusation of judge; consultation with Capt. Bell and suit in appealable amount instituted; by agreement, cases submitted to Judge Pardee, who sustained plea to jurisdiction; suits then brought in State court by nonresidents and next day transferred to United States court; plea of collusion; case of Caldwell filed by Capt. Bell took same course, object of which stated; agreement entered into to make an appealable case upon waiver of pleas; causes which induced both parties to make it; covered all cases; United States Supreme Court affirmed judgment below by divided court pending Mr. Justice Lamar's confirmation; same questions in State and United States courts; Judge Boarman on State court time judgment in favor bondholders; reversed by State supreme court; total amount involved, \$75,000 to \$90,000; Leonard represented about \$75,000; direct cause of agreement stated; thinks if United States Supreme Court had had full bench result would have been different, with reason for so thinking; impression among lawyers; Leonard possessed undue influence over Judge Boarman; Dorian case; point decided in Wilson case; proof in Wilson case and this case identical; point decided in Wilson case stated; bonds in Caldwell case similar to bonds in this case; knows of no effort by Leonard to buy bonds to control Caldwell suit (p. 16).
- H. A. BOGEL's** testimony: Held no bonds; had none under control and never brought suit against city (p. 19).

SECOND CHARGE AND ANSWER.

- E. H. RANDOLPH's** testimony: Counsel in Goldkin case; Goldkin killed and succession administered by curator; Elstner very able criminal lawyer; failure to denounce murder of ancestor deprives heirs of inheritance; Elstner's fee for prosecuting Goldkin's murderer; rejected by district, no appeal and judgment became final; defense of heirs against its payment stated; Elstner's suit for fee in Federal court; defense in that court stated; judgment given by court, Judge Boarman presiding; jury restricted to reasonable amount; contention of defendants. Judge Seay, city attorney Shreveport, associated with Leonard in Lewis case and witness and made argument for Leonard in case against city. Elstner's contention in
- J. L. HARGROVE's** testimony: Attorney for Goldkin; Elstner appeared as private prosecutor; told Elstner the heirs would not be responsible for his fee; was requested to do so by heirs Federal court in Goldkin case (pp. 19-21).
(p. 21).
- See Mr. Elstner's statement (p. 56).

THIRD CHARGE AND ANSWER.

- T. F. BELL's** testimony: Had conversation with James Turner in Marshall, Tex., about the employment of Mr. Leonard in Scott's case; Turner told witness his client got what he considered an "extraordinary letter;" advised Turner to employ Leonard; grounds of advice; an advantage to have Leonard as attorney before that court; beyond ability as a lawyer; what he means by having the ear of the court; reasons for his impression; was counsel in case of Caldwell against city to make an appealable case; Leonard came to office a day or two after suit was filed and wanted to know what he would take for the bonds in suit; referred him to client, but knew they were not for sale; Dorian case not then decided; why he remembered the fact (p. 26).
- E. H. RANDOLPH's** testimony: Coincides with Capt. Bell with respect to relations of Leonard and Judge Boarman; papers in Elstner case showed on their face that he was a citizen of Louisiana and other parties non-residents; amount of verdict reduced by Judge Boarman (p. 21).
- J. L. HARGROVE's** testimony: Is well acquainted with Albert Leonard; has listened to testimony of Capt. Bell and Mr. Randolph, and it would almost, word for word, be his testimony in respect to influence and status of Mr. Leonard and Judge Boarman's court; thinks it is the understanding among the people that the employment of Mr. Leonard recommends the case to the favor of the court; testifies in respect of the suits on city bonds; also, the Lewis case; says there was a considerable amount of railroad receiverships and such things, a million of dollars or two; it was general talk that if you wanted to get a big thing through you had to get Leonard (p. 24).
- T. ALEXANDER's** testimony: General impression, particularly among lawyers, Leonard has undue influence with court; does not know of Leonard soliciting business on ground could guarantee result; has heard such; would say Leonard had been counsel on one side or the other of all important suits; thinks he has been counsel for three or four receivers; states cases (p. 22).
- J. B. SLATTERY's** testimony: Cannot state as to the public, the general opinion as to Leonard's undue influence with court, but has heard several members of the bar intimate that; reputation of Leonard amongst bar first class; better than the average, not as speaker, but successful practitioner (p. 27).

- J. S. YOUNG's testimony: Member of the firm of Young & Fletcher, lawyers; firm has judgment against Judge Boarman rendered prior to case of *United States v. Jones*, amount four hundred and odd dollars; history of claim; has examined carefully, and found no property that Judge Boarman owns; found one piece in Boisier, but when about to issue execution it was transferred, and informed by clerk of court, to Tillie or Leonard; transfer prevented seizure of it; thinks impression Leonard has undue influence over Judge Boarman on the part of bar and citizens; what he means by undue influence; reasons why (p. 27).
- Hon. N. C. BLANCHARD's testimony: From time Mr. Leonard ceased to be district attorney has come to his knowledge as Representative, citizen, and lawyer, that Mr. Leonard is looked upon as attorney specially favored by court, and that it is necessary in many of the more important cases to secure his services to have business transacted, and win cases (p. 28).
- A. H. LEONARD's testimony: States number of cases decided in his favor by Judge Boarman; states number of cases in which he has been retained, and number of cases against Gerson and Stein; states how his firm were employed in certain other cases; states in detail the amount of fee paid in each case; states fully why gentlemen who have testified in regard to supposed relation between Judge Boarman and himself are mistaken, all of whom, with one possible exception, recommended him for district attorney in language he did not wish to repeat; Mr. Wheaton elected clerk before Judge Boarman on State bench; exceptionally qualified for clerk and man of integrity; was counsel in bond cases, made it known was entirely satisfied and confident payment of them could be enforced; took cases on contingent fee, but nothing said about costs; costs considered paid by indebtedness of clerk to him; knew Judge Boarman's opinion about bonds exactly, and thinks when he instituted suits that, so far as Judge Boarman was concerned, had a dead shot; knew what the decisions of the supreme court of the State had been; brought suits in unappealable amounts because he knew Judge Boarman's decision would be final, and thought it would be in his favor; thinks Judge Boarman knew of his contracts for large contingent fees as it was pretty generally known in the community; opposed motion of recusation because considered he had a right to have cases tried by competent judge before whom they were pending; why he brought them in State court and had them transferred to United States court; states circumstances of agreement with T. Alexander, esq.; states difference between gas company bonds and bonds in these suits and character of proof to meet case; states what was in his opinion the Federal question in the cases; states circumstances under which he dismissed cases of Crook and Carter at Shreveport, in which Judge Howe appeared as opposing counsel (p. 29).
- WILLIAM WIRT HOWE's testimony: Knows Judge Boarman and Mr. Leonard; there were two cases, Crook and Carter, against New Orleans, Baton Rouge and Shreveport Railroad Company, pending at Shreveport last winter; was associated with Dillon & Swayne and Mr. Alexander, of New York, trustees of a land grant and mortgage of New Orleans and Pacific Company; issues were framed and note of evidence and agreement in 1889 as to trial at that particular term; the object of suits was to assert and rank different liens; the understanding was that Mr. Leonard and himself would go to Shreveport at February term, 1890, and cases would be heard; states particularly of what occurred while at Shreveport; the dismissal of the cases by Judge Pardee on motion of Mr. Leonard, and the impression upon his mind as to the reason why Mr. Leonard dismissed the suits (p. 34).
- EDWARD H. FARRAR's testimony: Says there is wide-spread opinion in State among the people and bar that Mr. Leonard is what is termed ear-of-court lawyer; testifies as to their personal intimacy; Mr. Leonard a lawyer of fair ability and stands well at bar; not considered one of the leaders of the bar of the State, however, by any means; scandal which has been going around in western district and New Orleans for three or four years that Leonard has undue influence over Judge Boarman beyond what law and facts of a case would warrant (p. 22).
- Hon. J. C. BOATNER's testimony: Has considerable business of importance in Judge Boarman's court, and been mortified in a number of cases to have clients come and inform him that they had been advised that it was to their interest to employ Mr. Leonard as associate counsel; but for the motive which induced employment would have been glad to be associated with him in any case; states reasons why the impression is general that the employment of Mr. Leonard in that court is necessary. So far as his firm is concerned, they have not for several years instituted any suit in Judge Boarman's court, because of the uncertainty of his rulings and proceedings and the uncertainty of his permitting counsel to argue cases and manage cases in their own way. Says there is a general feeling, so far as Ouachita Parish is concerned, that there is an utter want of confidence in the Federal court; explains as to preferring these charges, and refers to case pending involving about \$100,000; did not recommend Mr. Beattie for clerk, and stated reasons why to the judge; was asked by Mr. Beattie to become surety on his bond; does not recollect whether he declined at time, but had not the slightest idea of becoming surety (p. 23).

FOURTH CHARGE AND ANSWER.

- E. T. LAMKIN's testimony: Attorney at Monroe; represented Pfaffenbach, under whose libel steamboat *Prince* was sold; boat brought \$1,500, and sold October or November, 1887; first decree October, 1889, for four hundred and twenty-odd dollars, including interest, costs, and \$20 proctor's fee; represented three interveners for small amounts; states circumstances of delays in getting decree signed by Judge Boarman; wrote again in April, 1890; money sent perhaps the last of April or first of May (p. 35).
- H. H. RUSSELL's testimony: Represented libellants in suit in which the *Prince* was sold; case has been on docket since 1887; so far as he knows no judgment with reference to parties he represents for or against them; no contest against their claim except as to rank, and knows of no contest as to rank for balance of funds which should be in registry of court; *Prince* case has been submitted twice; gives history of case in the court; does not know amount of balance there should be in registry of court; states character of his claim; no opposition to his receiving balance of funds after paying privileged claimants; they consented to that, yet funds remains in registry of court; thinks there have been some payments to prior privileged claimants (p. 35).
- J. B. BEATTIE's testimony: Is clerk of the United States court, western district; at time of his succession there was \$1,000 or \$1,100 in registry of court; it was in Judge Boarman's possession; Mr. Wheaton died 20th of October, 1888, and he was appointed 29th November following; some time in March, 1889, money was paid over to him; his bond was approved latter part of February; there was no statement accompanying payment by judge as to dif-

ferent funds money belonged and had no record of matter; merely held money subject to order of judge, to be paid to whomever he directs; the most of it has been paid; balance in Commercial National Bank as registry of court by verbal order of court; believes Mr. Wheaton kept book showing receipts and disbursements; understands from his daughter the book was taken to Kentucky before he died; has written to her repeatedly and never received an answer; was deputy clerk when *Prince* and *La Force* were sold; *La Force* funds paid out by Mr. Wheaton, *Prince* funds paid out during his administration; states to whom and amounts; there is \$300 now in registry of court; first judgment signed October term, 1889, at Monroe (p. 36).

J. F. URZ's testimony: Merchant in Shreveport; member of firm of Utz & Smith; Mr. Wheaton, clerk, kept a personal account with firm; states manner of making deposits; his statement of account with him, which shows how frequent deposits were made; Mr. Wheaton said Government did not furnish safe and had no place to leave his money; court room and clerk's office over store; on February 13, 1888, Judge Boarman brought order for \$471.64, balance remaining to credit of Mr. Wheaton (furnishes copy); order was paid by check; states further particulars of account (p. 36).

W. F. MILLSAPS's testimony: Resides at Monroe; is editor; was lawyer 1885-'87; was counsel for number of creditors of ———, of Monroe; there was an agreement between the parties of record; there was delay in getting judgment signed, think from ten days to two weeks; was irritated about it; it was a consent matter in which nobody had any interest except parties of record and he requested kind offices of his friend, Mr. Elstner, who he knew had access to Judge Boarman; he assisted in getting judgments signed, for which service he modestly remunerated him; Mr. Wheaton paid him whole amount except \$77 ordered to be reserved by Judge Boarman for costs, which has never been paid out that he knows of (p. 37).

C. A. BOATNER's testimony: Was of counsel for defendants in the matters testified to by Mr. Millsaps; states what he did with reference to the agreement between the counsel of the parties and his efforts to get Judge Boarman to sign judgments (p. 38).

MURRAY F. SMITH's testimony: Lawyer, residing at Vicksburg; had case against *Parisot* and cargo; steamer took fire loaded with cotton; impression crew had abandoned her; tug went to boat and towed her to sand bar where she sank in shallow water; great part cargo, machinery, and hull thereby saved; owners of tug libeled cargo, machinery, and wreck of *Parisot* in United States court, western district Louisiana, hull having stranded on Louisiana side; settled with underwriters of cargo and there was no controversy about that; hull and machinery sold under interlocutory decree and proceeds paid into registry of court; net amount after deducting costs something like \$650; this suit instituted in fall of 1883; such a small amount in registry that as proctors for libellants proposed to owners of boat and underwriters of hull that should withdraw fund from court by consent to avoid expenses, and were to divide it on basis of one-half to salvors, one-fourth to underwriters, and one-fourth to owners of hull; got written order signed by owners of hull and underwriters of cargo to pay money over to his firm and sent that order to clerk September 5, 1884; received no reply from clerk, and at October term went to Monroe; found Judge Boarman had gone to Shreveport; left order to be put upon minutes of court and signed by Judge Boarman; details correspondence with respect to delay in signing order; went to Monroe May term, 1885; states what occurred between him and Judge Boarman; states how money finally paid; says that he never has been more rudely treated in his life by any judge than he was by Judge Boarman (p. 38).

FIFTH CHARGE AND ANSWER.

E. T. LAMKIN's testimony: States that at time injunction in suit of J. E. Leonard against A. C. Gibson, marshal, was issued, was not a member of law firm of Boatner & Lamkin, but was occupying office of Boatner & Boatner with them; Mr. J. E. Leonard applied to Mr. C. J. Boatner to take out an injunction to enjoin sale to be made perhaps next day in East Carroll Parish. Mr. Boatner advised him it was against his judgment, besides impossible to obtain injunction on account of absence of Judge Boarman; Mr. Leonard remarked that he could get Mr. Beattie, deputy clerk, to issue injunction, and Mr. Boatner told him he was without authority to issue injunction, and that he would not ask him to do so because he knew it was wrong and illegal; states Mr. Leonard's reply to Mr. Boatner and circumstances under which application for injunction made to Beattie, execution of bond and issue of injunction and also facts connected with its dissolution by Judge Boarman (p. 40).

SIXTH CHARGE AND ANSWER.

JAMES TURNER's testimony: Is lawyer at Marshall, Tex.; is counsel in case of United States against W. T. Scott and others; states circumstances under which Mr. Leonard employed in case with him; the supposed connection of Mr. Leonard with the judge and his influence with the judge in obtaining a speedy hearing and decision of the case was the ground upon which he advised his clients to employ him; he did not mean to impress upon the minds of the committee the idea that it was through him Mr. Leonard's employment was made; he wanted to impress upon their minds that he advised and consented to it and that his consent was necessary before the employment could be had; states history in detail (p. 41).

PETER YOREE's testimony: Has resided in Shreveport since the war; was interested in suit of United States against Scott and others; his wife is daughter of Col. Scott, and one of the heirs; knew Mr. Leonard was employed to appear on behalf of the heirs; he employed him himself; he first approached Leonard on the subject; did not receive any letter from Leonard; Leonard did not make any statements that he wanted him to employ him; the idea suggested itself to his mind, and he came to Leonard; did not have any conference with Mr. Turner with respect to this; employed Mr. Leonard before Mr. Turner had been consulted with [here Mr. Blanchard makes a statement]; his brother-in-law, W. T. Scott, party to suit; does not think he ever spoke to Mr. Turner; he may have done it; speaks of Judge Boarman's reputation; states why he employed Mr. Leonard (p. 43).

Mr. LEONARD's statement: Never met any of the heirs of W. T. Scott, except Mr. Yoree, nor wrote to them or anyone in reference to employment in this case (p. 56).

See, also, T. F. Bell's testimony (p. 26.)

SEVENTH CHARGE AND ANSWER.

- S. B. McCUTCHEON's** testimony: Is banker at Shreveport; appointed receiver of narrow-gauge Houston road by Judge Boarman; the appointment of Leonard and Elstner as attorneys for receiver suggested, not by Judge Boarman, but he believes by Mr. Wise; it may have been Mr. Pierce, who was attorney of creditor who obtained receivership; would have appointed any attorney named by him at his request and request of Mr. McDonald, who was a party in interest; could not state positively who made suggestion to me, but was understood that Leonard and Elstner were to be the attorneys representing the road during my receivership; but for the suggestion would have retained Wise & Herndon; believes suggestion was sprung in this way: They were the attorneys representing the road, but this was a different interest and might conflict; explains matters occurring after vacation of his appointment by Judge Pardee; says statement of Beattie's account is all that is shown on their books (p. 45).
- W. H. WISE's** testimony: Lawyer at Shreveport for twenty-one years; his firm represents narrow-gauge Houston road; Mr. W. S. Pierce came to his office with a letter of introduction from Dillon & Swayne and represented that he was about to file bill in equity and ask for a receiver of this road; he knew my firm had been attorneys for a number of years; had had correspondence with Mr. McDonald also and did not desire any change made in appointment of attorney for the road after it should go into hands of receiver; details circumstances under which application for receiver made, appointment of receiver and attorneys for receiver; thinks Union Trust Company had filed bill just one day prior and applied to Judge Pardee; states Judge Pardee's action, revoking Judge Boarman's appointment and appointing M. G. Howe receiver, who asked services of his firm, who are now attorneys for the receiver; testifies respecting Mr. Leonard's undue influence over Judge Boarman; states what Mr. Pierce said to him respecting interview with Judge Boarman and the reason his firm not appointed because of that interview; is positive he never suggested employment of Leonard and Elstner (pp. 45, 46).
- It is admitted that Judge Boarman suggested to attorneys of Neil McDonald and to the receiver appointed by him in case of McDonald, the employment of A. H. Leonard, as attorney for receiver (p. —).
- EDWARD H. FARRAR's** testimony: Lawyer at New Orleans; his firm, Farrar, Jonas & Kruttschnitt, were counsel for Union Trust Company, trustee of first and only mortgage bonds of Houston and Shreveport Railroad, on 2d October, 1889, filed a bill in circuit court for western district for Union Trust Company, at request of mortgage bondholders for appointment of a receiver; process served on that date, and the notification was served with the application for appointment of receiver would be heard before Hon. John A. Pardee, at Huntsville, Ala., 16th October; on following day after this bill filed and notice served, Neil McDonald, holder of certain receiver's certificates, filed bill for receiver, and set down for hearing before Judge Boarman; exhibits correspondence; also recites action of Judge Boarman and Judge Pardee, with respect to appointment of receiver, in detail (p. 47)

GENERAL CHARGE.

- J. C. WEAKS's** testimony: Has been marshal of the district; was appointed 1881 and served four years; is under the impression that an affirmative answer to question whether or not during the incumbency of office he loaned to the judge of the district or that he applied to him for financial accommodation would subject him to a criminal prosecution; is required to answer; has loaned Judge Boarman money three or four times; would say \$500, not less, might have been more; no inducements held out to him to lend the money outside of what would be usual in a transaction of that kind; it was no personal inconvenience to him, because it was the Government's money, money in his hands as marshal; knew it was illegal, but was to his interest; would not have loaned the money to any private individual; never let any one else have Government money; can not say the judge knew it was Government money, but when he would call upon him for it would inform him that he had to settle with the Government; noticed one coincidence in the payment by him of money into the registry of the court and the subsequent repayment to him of what the judge owed him; states the circumstances; average compensation of marshal would approximate \$1,500 to \$1,800; had money to his account which he considered sufficient to make good his account (p. 48).
- A. C. GIBSON's** testimony: Was marshal corresponding with the term of President Cleveland; money was borrowed from him during his incumbency by the district judge amounting at different times to \$500 or \$600; as to whether it was Government funds says his testimony would be about what Mr. Weeks said; states fully why he loaned the judge the money; states the particulars of each loan; thinks the Government was indebted to him that much at the time loaned the judge \$300, but supposes really it was Government money; was not authorized by the accounting officers of the Treasury to retain it; salary could be enhanced or decreased according to the judge's disposition; explains how; judge did not in any way put him in duress to control his will; explains the inducement; never presented to Judge Boarman any false or fraudulent account; never had in mind any expectation that he could induce the judge to approve any false or fraudulent account; term sometimes continued after departure of judge, two or three, perhaps (p. 49).
- JOHN R. JONES's** testimony: Is a lumberman; was defendant in suit of United States *vs.* John R. Jones for cutting timber on public lands, tried several years ago; has frequently endorsed paper for Judge Boarman; is not aware of having indorsed any paper for Judge Boarman shortly anterior to that trial; was not on his paper at the time of the trial; states the particulars with respect to his indorsements; held life policy on Judge Boarman's life; refers to relations with Dr. Clark; knows to some extent the estimation Judge Boarman is held by community at large—has heard it discussed; his own attorney hated to go before him; his attorney recommended him to compromise a case by which he lost \$27,000, because he did not go to the United States court; thinks Judge Boarman's reputation is pretty good, but there are some attorneys here who object to him; states circumstances of compromise with New Orleans and Pacific Railroad; testifies as to Judge Boarman's financial standing (p. 53.)
- HON. J. C. BOATNER's** testimony: Thinks suit of Sanders *vs.* Sanders, instituted in July, and that charges were handed to committee in April or May; says Mr. Leonard was engaged with him in the Stein and Gerson cases, about a hundred of them tried as one, must have been fifty; does not want the impression made that he had any objection to associate with Leonard other than what he had recited; dislikes the appearance of winning cases by the

back door—dislikes the idea that if he wins a case it was done by the hocus-pocus influence of an attorney; does not know of Mr. Leonard ever having exercised any undue influence in their cases; his relations with Judge Boorman were pleasant until he tried to appear for Government in the case of *United States vs. Jones*, which was in 1888; after that case had no further relations with him; feeling since then one of resentment of what he considered an unpardonable and tyrannical abuse of power as judge of the court; states the circumstances of the trial of large number of timber cases at Opelousas in which he was employed to assist the district attorney; also circumstances of trial of *United States vs. Jones*, and judge's refusal to hear argument by him; the second time judge had denied him the right to appear for the Government to argue questions of law before him, he then withdrew; jury found verdict for defendant; feels that that action of judge was an outrage on his rights as counsel and lawyer; had tried not to believe charges against judge, but after action in these two cases, and with constant complaints, which were coming to him from other parties, and lawyers felt compelled by sense of duty to submit these charges; states as to case against Foster (p. 54).

FIRST CHARGE.

That the said judge usurped jurisdiction in a certain suit instituted by Albert H. Leonard against the city of Shreveport, the said suit being based on an alleged contract between the said Leonard and the said city for professional services in a suit against said city, the said Leonard and the said city both being citizens of the State of Louisiana, and of the controversy between whom it was and is manifest that the court was without jurisdiction. On the trial thereof the said judge extorted a verdict from an unwilling jury in favor of plaintiff, the case being unappealable.

ANSWER.

He denies each and every allegation made against him except what is hereinafter admitted.

Respondent denies that he usurped jurisdiction in the case of *A. H. Leonard vs. The City of Shreveport*, or that it was or is manifest that the court was without jurisdiction to try said case, or that in said case he extorted or in any way wrongfully obtained a verdict from an unwilling jury for the plaintiff. He avers that prior to the institution of the Leonard suit the same point or question upon which the denial of jurisdiction was raised had been passed upon adversely to the matters stated in plea of the city in the Leonard case, in the case of *Sawyer vs. Parish of Concordia*, in the United States Supreme Court at Monroe. In the Sawyer case, both parties being citizens of the same State, a plea to the jurisdiction of the court was interposed by defendants similar or like the plea in the Leonard case, and was heard by and submitted to Judge Pardee, circuit judge, and myself sitting together at Opelousas; that said case was again argued at Monroe, at the ensuing term, and taken under advisement; that whilst the said case was held under advisement respondent consulted with Judge Pardee on the jurisdictional question, and finally concluded, with his concurrence, that the court had jurisdiction, and so in a written and published opinion decided against defendant's plea; that Judge E. C. Billings, of the eastern district, as respondent was informed, long anterior to the decision in the Sawyer case, had held to the opinion that the United States court had jurisdiction in a suit similar as to the jurisdictional question, of which he had had cognizance.

He represents further that in the suit of *Jacobs et al. vs. The City of Shreveport*, instituted prior to the suit of *Leonard vs. same city*, the same question as to jurisdiction was raised and decided long before the plea to the jurisdiction in the Leonard case was decided by respondent. That the said cause of *Jacobs et al.*, No. 1 on the Shreveport docket, was tried before Judge Pardee, circuit judge, who gave judgment in favor of the plaintiffs. The opinion in the Sawyer case and the opinion in the Leonard case were fully reported in the Federal Reports, and said former opinion was afterwards cited by Judge Hugh L. Bond, of the fourth circuit, and by Associate Justice Harlan in the seventh circuit, with approval in reported decisions; that Judge Pardee cited with approval the Sawyer case in the several suits tried by him at a later day against the city of Shreveport, reported in Vol. —, Federal Reporter.

TESTIMONY.

E. H. RANDOLPH testified as follows:

By Mr. BOATNER:

Was engaged for the city of Shreveport in the case of *A. H. Leonard against said city*.

Q. I will just ask you to give the history of the trial.

Mr. McCORMICK. As briefly as possible

A. The case was twice tried before a jury; in each instance no jury was waived. The suit was for \$3,500 against the plaintiffs due for attorney's fees by the defendant to the plaintiff, and at the first trial prior to the trial on the merits there was an exception to the jurisdiction of the court. The plaintiff and defendant being resident of the same State and no Federal question involved in the case, exceptions were made to the jurisdiction of the court. That was overruled and the case went to trial on its merits.

(A question arose as to whether this testimony did not involve a question of law with which the committee had nothing to do. The chairman decided that the charge under which it was offered also involved the charge of corruption, and ordered the witness to proceed with his statement.)

The WITNESS. Well, I have already stated that exception to the jurisdiction was filed and overruled, and the case proceeded on its merits. The defense on the merits was mostly twofold—that the plaintiff had been settled with in full by the city of Shreveport, and furthermore that if the settlement was not in full that the plaintiff had abandoned the case after it left the Federal courts—the circuit court, and the city of Shreveport was forced to employ counsel to conduct the case in the Supreme Court of the United States; this fee was for services rendered in another suit, Charles Edward Lewis vs. The City of Shreveport. That was the position of the city in the case, the main position. The last one, that he had abandoned the case and the city was forced to employ other counsel at Washington to conduct the defense before the Supreme Court of the United States, Senator Jonas—

By Mr. OATES:

Q. As I understand you, the plea of defense was first to jurisdiction, second payment, and third abandonment of the case?—A. Yes. The position taken by the defendant in the case was that the defense on the merits involved merely questions of fact which a jury tried and found for the defendant—that was the first trial—the defendant won the case before the jury on the first trial. Well, some two or three weeks after, I do not remember exactly, a new trial was granted—a new trial granted the plaintiff and a year or so after that the case came on again for trial and there was a good deal of difficulty in trying the case; evidence was not allowed to be submitted to prove settlements from the standpoint of the city, and the case was given to the jury on the second trial about 12 or 1 o'clock is my recollection—it was some time in March.

Q. Mr. Randolph, you say that evidence that was offered by the city was excluded as evidence touching the matter of payment; had you not better state about that as part of the history of the case? We want to hear what that was.

The WITNESS. There was in the record a receipt of \$1,000 from the plaintiff, Leonard. The city of Shreveport had appointed a committee to settle with Mr. Leonard, and his receipt was in the record for \$1,000. My recollection is that this receipt was given before any steps were taken in the Supreme Court of the United States, and stated that it was in full for services to date—some such a question as that. I offered to prove by the committee that the settlement with Mr. Leonard was in full and that he was discharged from the case—I offered to prove that by the committee; McWilliams was chairman of the committee. The court would not permit such evidence, taking the position that these matters should appear by ordinance or written expressions emanating from council as a body, and that I could not prove payment by any other means. The question involved was—I took the position that we could prove payment by any means—illustrating that if we had a dozen hands on the street, and we were suing the city for the wages, we could prove by the street commissioner or any other means possible, without regard to the record of the city council to show that these men had not been paid.

Q. Now, as to the discharge of the plaintiff?—A. Well, yes, that was included in the settlement; it said "Payment in full, and settlement and discharge."

By Mr. McCORMICK:

Q. Well, the legal question; was the question one of the power of this committee to discharge in the case of the council of the city of Shreveport?—A. It was twofold, discharge and payment in full. Payment in full involved the question of discharge, of course.

By Col. OATES:

Q. The ground of exclusion by the judge of that evidence was that it should

be shown by an ordinance of the city government, or some resolution adopted by them?—A. Yes, sir.

By the CHAIRMAN:

Q. Some official action by the council?—A. Yes, sir.

Q. In session?—A. Yes, sir.

By Mr. McCORMICK:

Q. And not by this committee?—A. Yes, sir. The same thing happened on the second trial, the same efforts to get the evidence in and its exclusion. The case was submitted to the second jury about this time of day, I think it was in March. They were held and remained here, I think—they came in once while I remained, and my impression of the announcement of the court was, this is a simple case—the jury said they could not agree, and the court said this was a simple case and had been tried once before and there was no reason why they should not find a verdict and that they had better retire. The city of Shreveport had paid Senator Jonas \$500 for conducting the case at Washington.

Q. What case?—A. The Charles Edward Lewis case which Leonard was employed to defend for \$5,000; and the records of the Supreme Court show that Jonas was the only person that appeared for the city. The city paid Jonas \$500, and the court said to the jury that if they did not want to give Mr. Leonard a judgment for the \$3,500, they might take into consideration what the city had paid Mr. Jonas \$500, and give him a verdict for \$3,000, which the jury finally did, rendering a very illogical verdict. They were held in the jury room that afternoon, that night, and, my recollection now is, all the following day and the following night. They finally returned a sealed verdict, whether because it was Sunday or Saturday night, they returned a verdict—whether it was Sunday and could not be received until Monday or not I do not know. They came into court and I state now what I heard; of course I know it is not admissible.

Mr. LEONARD. Then why do you state it, Mr. Randolph?

A. After waiting some time after the case had been submitted to the jury, and after they came in once, I was not in court any more when they appeared in court before the finding of the verdict. That is about the history of the case, I think.

By Mr. BOATNER:

Q. Let me see if I understand. Your defense to this suit, interposing the plea of jurisdiction of the court, was full settlement and discharge of the obligation had through a committee of the city council appointed for that purpose; is that your plea, substantially?—A. Yes, sir.

Q. Then you offered to prove by the members of this committee that that payment of \$1,000 had been in full of all services rendered by Mr. Leonard in this case?—A. Yes, sir.

Q. And the court declined to receive parol evidence of that fact?—A. Yes, sir.

Q. Mr. Randolph, how long have you been practicing at this bar?—A. Ten years, sir.

Q. I will ask you to state to the committee what is the general understanding of this bar and of the community here with reference to the relations existing between Judge Boarman and Mr. Leonard.

By Col. OATES:

Q. Before you get off on that I want to ask this witness one question. Do I understand that you stated in your statement of the pleadings all the defenses that were offered, all the defenses that were made, all the pleas that were put in?—A. Substantially; the plea would show really better—substantially I have stated the position of the city in that suit.

By Mr. McCORMICK:

Q. Under your practice here does your record show the offer, a written offer, of the evidence and the rulings of the court on the offer?—A. No, sir; not except in appealable cases. This was under \$5,000, and not appealable.

By Mr. BOATNER:

Q. You were counsel for the city in that case. I will ask you to state to the committee whether or not that the case was fairly and judicially tried, or whether the influence and power of the court was improperly lent by the judge to the plaintiff to obtain a verdict from the jury.—A. Well, the question is twofold: the first part of it I will answer first. Of course I represented the defendant there, against whom a judgment finally went, and there might be some touch of dis-

atisfaction with the case on that account; but taking that into consideration and making allowance for that, I do not think the case was altogether tried in consonance with my ideas of what the law of the case was, and I do not think that a proper opportunity was allowed the city to make her defense as she should have been allowed. I know that I was frequently stopped in argument in making a legal point. One of the main legal points in the case was that the city was without the power to contract a debt of \$5,000 under her statute without providing by ordinance a means of fully paying it. I proposed to argue that point elaborately before the court and was not permitted to do so, and the action of the court aroused the comment of almost the entire bar. I know that A. D. Land and others spoke of it, that it was rather a summary disposition of the legal position taken by the city.

Q. You say you were not allowed by the court to argue the legal propositions?—A. There was one branch of the legal propositions in which argument was curtailed to such an extent as to arouse the comment of the bar.

By Mr. MCCORMICK:

Q. To the court or jury?—A. To the court. You see the court charged the jury and instructed them as to the legal points, and I wanted to influence the mind of the court if I could as to my legal position, so that the court would take my view in charging the jury. That is where the argument came up.

Q. Where you were interrupted in your argument was where you were arguing to the jury?—A. No, sir; to the judge before he instructed the jury. That is, preliminary to the submission of the case to the jury.

By Mr. BOATNER:

Q. Well, Mr. Randolph, we have got to the other branch of the question.—A. Well, I can not answer that last branch of the question very well. I think the jury at the second trial was held too long; I felt that way about it; there were questions of fact in the case which the jury had in hand, and that the keeping of them for the length of time was unusual and unnecessary. It occurred so to me.

By Mr. MCCORMICK:

Q. How long was that?—A. I have just stated that I think that question went to them about midday and that they were out—they were out at least that afternoon and night and the second day; now whether they were out the following night and part of the next day I am not positive, but I think so.

By Mr. BOATNER;

Q. Mr Randolph, I will ask you this question as an expert: In your opinion was that a fair and untrammelled verdict of that jury or was it extorted by confinement?—A. I do not think it was the untrammelled verdict of the jury. Of course juries compromise verdicts; that is frequently a common thing for juries to compromise a verdict.

By Mr. LEONARD:

Q. There was a suit of Charles Edward Lewis against the city of Shreveport instituted in the United States court of New Orleans?—A. Yes, sir. There was no western district at that time. This was in 1878. You were employed to defend the city under a resolution adopted by the city council, and to be paid in cash as a retainer \$1,500. I think you were to conduct the case from beginning to end. The \$3,500 you could not get until the termination of the litigation; it was contingent in the case, being finally decided in favor of the city. You entered suit against the city for \$3,500 in the western district. The defense interposed by the city, first, was a plea of jurisdiction, which was overruled; then you answered setting up two defenses substantially that the city had finally settled all claims due to you, and that, secondly, there was nothing further due, because in the litigation you abandoned the case. A verdict was rendered in favor of the city. Subsequently the verdict was set aside and a new trial granted. I represented the city on both trials. I introduced a receipt in writing signed by you for \$1,000, and in connection therewith put J. D. McWilliams, who, as chairman of the committee, empowered by ordinance of the council to settle with you, on the stand and proposed to prove by him that the settlement was final and complete, and that you had no further connection with the case. Subsequently I offered the receipt alone, you objected to parol evidence tending to modify or vary the terms of contract. There was further objection by you that the intentions of the city council could be gathered only from its records, resolutions, and ordinances. These objections were sustained by the court. (Pages 431-435.)

T. ALEXANDER testified as follows:

By Mr. BOATNER:

Am a lawyer at Shreveport; have been going on twenty-one years; I was counsel for the city of Shreveport when suit was instituted by Mr. Leonard on her bonds. They were brought and divided in unappealable amounts. A case was subsequently made which was appealable. There was a difference of opinion among the attorneys here shortly after the court was instituted; that the interest was not added—in taking into consideration the appealable amount. In a number of these cases if the interest were added I think they would be appealable cases, but they were so considered at the time as unappealable cases. I think the suits at first instituted—suits that were dismissed—I am satisfied were all in appealable amounts. My understanding is that Judge Pardee dismissed these suits without jurisdiction. We filed a plea in what we call recusation, asking the judge to decline to try them upon the ground that he was consulted as attorney in the issuance of the bonds; was city attorney at the time the bonds were issued.

Judge Boarman declined to consider the plea. It was my impression at the time that Mr. Leonard had an understanding with Judge Boarman about certain of these cases instituted in unappealable amounts. I think that impression was general in the town. To avoid the effect of these suits having been brought in unappealable amounts, in consultation, I think, with Captain Bell, we got certain parties who held other bonds to institute suit for an appealable amount. The suit was instituted by Captain Bell, copying the pleadings that Mr. Leonard had made in those other cases. The plea recusation was filed in that case. Judge Boarman stated quite emphatically that he did not consider he was recused in the case, but that he did not care to try the case if some other agreement could be reached about it. Mr. Leonard then stated to me that if we would agree to submit the case, to take the evidence there before Judge Boarman and submit them on brief or record to Judge Pardee at New Orleans and let him pass upon them there, he would consent that the case might go there and let Judge Pardee pass upon the question of jurisdiction, and that was done.

The cases were submitted to Judge Pardee, and he rendered an opinion sustaining the plea to jurisdiction, that there was no Federal question involved, and that these parties were residents of Louisiana, and he dismissed the suits. These suits were brought on these points in a short time afterwards, probably in a month or so, in the State court by parties who were nonresidents of the State—the same bonds. The cases were split; some of them. On the same day or the day after the suits were brought in the State court, application was made to transfer them to the United States court, and they were transferred immediately. Mr. Leonard was counsel and brought the suits in the State court.

By the CHAIRMAN:

Q. Was any question made in the Federal court upon the removal of these cases upon the ownership?—A. Yes, sir; the plea was made that the transfer was made collusively, with a view of giving jurisdiction to the court.

By Mr. McCORMICK:

Q. How was that?—A. Well, I will go on and explain what was done in regard to that, also this suit. The suit, I think, was entitled Caldwell, that Capt. Bell filed, and took the same course. That was our appealable case. That commenced in the State court too, following the course of Mr. Leonard. That case was made up for the purpose of making an appealable case; it was brought in the State court and removed to the Federal court; it was among the cases knocked out by Judge Pardee. Our object in having this case conform exactly to the course of procedure adopted by Mr. Leonard was that we were afraid we would be cut off from appeal. We feared a remittitur might be entered and cut us off from appeal even in those cases that were appealable. For that reason we preferred to have a case that we could take to the Supreme Court of the United States. We knew the decisions that would be rendered in this particular matter might be *res adjudicata*, but we desired to take the cases before the Supreme Court of the United States; the pleas were filed and court came on.

Judge Boarman stated that he thought he was not recused, that the principle was different in his court, and that while he did not care to try any case, that he could draw his pay without doing it, he would rather we would make some arrangement out of court about it for settlement; or perhaps Mr. Leonard made the proposition. Mr. Leonard agreed to make a case that we could appeal, provided we would abandon our plea of recusation, and that these parties were facti-

tious owners and had no interest in the suits, and provided we would waive our right to a trial by jury, and provided further we would make our plea returnable at the first term instead of asking our turn on the regular docket of the Supreme Court. We were compelled to make all these concessions in order to get a case which would be within appealable jurisdiction of the Supreme Court of the United States. The arrangements we made covered all the cases; there were one or two cases which we agreed to let stand on the docket to await the judgment in these cases. I think in the case where the account was large enough to appeal to the Supreme Court judgment was entered at the same time as the other, but no appeal was taken. I do not recollect whether it was to abide result or not. It dropped out of sight. After we got the appeal we paid no further attention to it.

The Supreme Court of the United States affirmed the judgment below by a divided court pending the confirmation of Justice Lamar. There were two points in the case that went up; one of them was that the bonds were absolutely invalid because the city was without power to issue them, another that the bonds were void because of the requirement of the State law that provision must be made at the time any debt is contracted for the payment of the interest and the principal at the time the debt is contracted, and we plead this requirement had not been complied with. The same questions that were presented in the State supreme court and decided by it were presented before the Supreme Court of the United States and the judgment of the court below affirmed because of the division. I was counsel in the State court and the Supreme Court of the United States. Judge Boarman was on the bench of the State court at the time and he rendered judgment in favor of the bondholders. I was city attorney and carried the case to the supreme court of the State, and they reversed his judgment and decided that the bonds were absolutely null and void. The total amount of the bonds, principal and interest, represented in these suits, I think, was something like \$75,000 or \$80,000, probably \$90,000.

Mr. Leonard, I think, represented in these suits something like \$75,000, I think, exclusive of interest. There were a few bonds represented by Mr. Slatery, about \$5,000. Under a plea of recusation in these cases I offered to prove that the judge had been city attorney and had advised the issue of these bonds. I had copies of the proceedings of the city council, showing he was city attorney and from time to time his action in regard to it. There was no positive evidence that he advised the issuance of the bonds further than the fact that he was the legal advisor of the city at the time and had more or less to do with these bonds, at least in one case where property was deeded with some of the bonds. The minutes of the record will show that the matter was referred to City Attorney Boarman to investigate the title and draw up a title, etc. I think it was stated that he had as judge of the State court decided the same question on bonds of a similar character against the city, but I won't be positive about that. In point of fact he did not make any ruling on the plea of recusation that you would call a ruling noted on the minutes of his court. He said in conversation from the bench that he would not recuse himself, but he did not enter any order on the subject overruling the city, and, as I told you, we agreed to withdraw it after this argument.

By Mr. BOATNER:

Q. Well, now, I will ask you to state whether or not the unappealable nature of the cases and the judge's known opinion with reference to the questions of fact and law involved was not the direct cause of your having made this agreement by which you abandoned the right of trial by jury, and the other defenses to the suit which you have named, in order to get the right of appeal?—A. Yes. We thought it was to our interest to do it, otherwise we should never have done it, of course.

Q. Otherwise there would be a judgment against the city for the full amount, not permitting of any appeal?—A. Yes, sir.

Q. Was there any other way which you could devise, as a lawyer, by which the right of the city to obtain a review of this decision could be secured?—A. No, sir; I don't consider so. As I stated to you, in the last instance, there were one or two of the cases that were appealable, perhaps more, yet we have no guaranty in fact; we feared that a remittitur might be entered and we would be left without any right to appeal.

By Mr. LEONARD:

Q. A number of suits you say were instituted by me as attorney, on bonds held by certain persons, residents of Shreveport?—A. Yes, sir; these suits I think,

were instituted in July or August, 1884; I think these suits were all unappealable on the face of the paper; there may have been some with the interest that would have been appealable. I think the records will show perhaps some of them were appealable. I do not know of more than one; I saw at least one. A plea to the jurisdiction, was interposed, and also a motion to recuse.

Q. Now, as I understand you, you say that Judge Boarman announced from the bench that he did not consider he could recuse himself in the case under the law covering the Federal courts, but that he did not want to try the cases. Didn't he say he preferred not to try the cases?—A. I think he did; I think that was what he said.

Q. Well, then you and I subsequently made an agreement by which those cases were submitted to Judge Pardee, the circuit judge?—A. Yes, sir, they were submitted to Judge Pardee on briefs by agreement of counsel. He held the matter under advisement for a while, I do not recollect the length of time. His ruling was in favor of the plea to the jurisdiction and dismissing the cases.

Q. Subsequent to that decision I, as attorney for certain plaintiffs, instituted some suits in the State courts and removed them to the Federal courts?—A. Yes, sir; one of those cases was appealable, and perhaps others.

Q. I think you will find they were all unappealable; I intended to make them so.—A. I still think perhaps one of them, if the interest was added in, would make it appealable. I may be incorrect. Those cases came again before Judge Boarman, and I interposed a plea to the jurisdiction, and also a motion to recuse, and he again announced that he did not consider he could recuse himself; in fact, said he would not. Then you came to me and we entered into a discussion of how we could arrive at some agreement that would be satisfactory to both. I stated to you that I desired to have the cases appealed to the Supreme Court in order that I might have some other opinion than that of Judge Boarman, and you told me if that was what I wanted that probably the matter could be arranged, to consolidate the cases so as to make one, and we entered into a written agreement embodying waiver of jury and submitted the case to the Supreme Court in October. We did not agree upon a statement of facts; the judge stated the facts.

Q. You have stated that it was unfortunate to you that there were only eight judges of the court?—A. Yes, sir.

Q. Your idea, then, is that the supreme judges divided four and four without having examined into the case at all?—A. I think that when men sit down to write an opinion it sometimes changes a man's views considerably. I think when the matter came up before them there were eight there and they discussed the matter verbally among themselves and four thought one way and four the other, and it was an easy way to get rid of it. If the decision had been written in that case I believe it would have been in favor of the city.

Q. You think they did not give proper attention to the case?—A. I only say this: If anyone had started to write an adverse opinion the difficulties would have been such that the opinion finally would have been in favor of the city. I think if it had been more fully considered it would have been.

Q. Now, you have stated that there was an impression in the community that many lawyers thought I possessed undue influence over the court?—A. Yes, sir.

Q. And I think you stated further that that impression was borne out by the decisions which had been rendered in my favor by him?—A. Yes, sir.

Q. There was a suit instituted in this court, in Judge Boarman's court, entitled Dorian against the city of Shreveport, was there not?—A. Well, I was not employed in that.

Q. As a matter of fact, was not that suit instituted before I instituted any suits?—A. Yes; I think a year or more. I think the judge had it under advisement when these suits were instituted.

Q. Now, after Judge Pardee, after these suits I brought were dismissed, at the time when I brought the second suits and removed them from the State court to this court, had not the Dorian case been decided in favor of the plaintiff by Judge Boarman?—A. I think so.

Q. Well, you had this then before you as a point from which you could anticipate the decision of Judge Boarman, that he had been the attorney for the city when the bonds were issued, that as State judge he had decided that they were valid and as a circuit judge he had decided that the bonds were valid, so was not that sufficient to justify the belief in your mind that he would probably decide in favor of the plaintiffs?—A. Well, it was one circumstance; yes, sir. I will say that was a circumstance not entirely conclusive.

The point in the Wilson case that the court passed its opinion on was that the

city under its charter was absolutely without power to issue bonds for the purchase of gas stock or for any other purpose whatever. These bonds were issued under the same charter under which the bonds you brought suit were issued. The Wilson bonds were issued, I think, in 1867 or 1868. The bonds on which you sued were issued in 1869. The only change of the charter of the city was in 1870 or 1871, when the charter was entirely repealed and a new charter enacted. The proof that I used in the Wilson case and its reference to the charter were identically the same as in this case. You will see in Judge Boarman's opinion he did not claim that the charter authorized the issuance of bonds except in an implied way. (Pages 453-463.)

T. ALEXANDER recalled and testified as follows:

By Mr. BOATNER:

The Dorian case had not been decided by Judge Boarman at the time these suits were begun by Mr. Leonard in the Federal court claiming jurisdiction because of alleged existence of a Federal question. He had it under advisement; no one knew how they would be decided at that time. I think he had passed upon the plea to the jurisdiction, then he took the case under advisement and had it under advisement about a year, may be a year and a half, and in the mean time these other bond suits were filed.

By Mr. LEONARD:

The bonds in the case of Caldwell against the city of Shreveport were similar to those in the suit which you brought; they were some bonds held by the fire department—part of them, I think; Caldwell was president of the fire department; some he got from Mr. Morris or somebody else, about five in all. It was only intended that the judgment of that case should be valid providing your judgment would be valid; they did not anticipate any such result. The suit was first brought in the individual name of Caldwell, but the bonds were the bonds of the fire department. It was understood at the time these bonds were filed that they were entitled to be paid if the bonds you had were paid. The suits were real in the sense that they were to be real judgments provided yours were real judgments. The object in instituting this suit was to make an appealable case. I know of no effort being made by Mr. Leonard to buy up these bonds and control that suit. (Pages 474, 475.)

H. A. BOGEL testified as follows:

By Mr. BOATNER:

I reside in Shreveport and am an attorney. I was not a holder of any of the bonds of the city of Shreveport upon which suit was instituted in Judge Boarman's court. I did not have any of these bonds under control. I never brought suit against the city. (Page 475.)

SECOND CHARGE.

That said judge usurped jurisdiction in a certain cause between M. C. Elstner and the heirs of ————, and corruptly extorted from an unwilling jury a verdict in favor of the plaintiff, his instructions to the jury and judgment in the cause being in direct contradiction of a judgment previously rendered by the district court of Caddo Parish and affirmed by the supreme court of Louisiana in a suit between the same parties and on said cause of action, the said cause being unappealable in amount, and the plaintiff being the husband of his niece, with whom he resides and has his home when in the city of Shreveport. In the trial of this case the said judge refused to hear arguments or to permit counsel to argue the cause to the jury in behalf of the defendants, and instructed the jury to find for the plaintiff.

ANSWER.

Respondent denies that he usurped jurisdiction in the case of Elstner vs. The Heirs of Godkin, or that he exported a verdict for plaintiff from an unwilling jury, or that his instructions to the jury were in direct contradiction of a judgment previously rendered between the same parties in the same cause of action in the State, district, or supreme court. He avers that said suit was never brought or never was at any time in the State courts; that it was filed originally and begun by attachment in the Federal court at Shreveport; that said defendants were non-

residents, and were brought into the Federal court by attachment, and that there could be no question of jurisdiction successfully raised in the case.

He avers that on the trial of said case the jury had all the questions of fact submitted to them, and that they found for the plaintiff in the sum of \$800; that the court, believing the judgment to be far too large an amount, respondent, without any suggestion or motion from defendant, directed that if plaintiff would not remit a part of the sum a new trial would be granted by the court, whereupon plaintiff remitted \$200, and judgment was signed for that sum. He denies that he refused to allow defendant's counsel to argue questions of fact to the jury, or that he directed the jury to find for the plaintiff.

Respondent avers that it may be a fact, though he does not now recollect, that he forbid the defendant's counsel to present questions of law to the jury, as is well known counsel often erroneously endeavor to do in the Federal court of the State.

TESTIMONY.

E. H. RANDOLPH testified as follows:

By Mr. BOATNER:

I was counsel in the Goldkin case. The Goldkin succession was administered in the State court by what we call a curator; the heirs were all absent and Goldkin had been killed by a person here, and Mr. Elstner, recognized as a very able criminal lawyer, prosecuted the slayer and claimed a thousand dollars for his services. The man was convicted and sentenced to be hung; punishment was commuted, and he was finally pardoned. In the settlement of curator's accounts I was guardian *ad litem* for absent heirs. Mr. Hargrove, an attorney, was subsequently employed by one or two of the heirs. Under our civil code, whoever fails to denounce to justice the murderers of their ancestors shall be deprived of their inheritance. Mr. Elstner claimed that he had saved the heirs their inheritance: we claimed the murderer did not need to be denounced, because he was already in jail and we had a district attorney to prosecute him, and the fee was not legally due. Its payment was opposed by the heirs. The district court rejected the claim, there was no appeal and the judgment became final.

Immediately thereafter Mr. Elstner proceeded directly against the heirs in the Federal court; they were nonresidents, the money of the estate being in the jurisdiction of the court, the Federal court had jurisdiction. Mr. Hargrove and myself defended the case. We first plead *res adjudicata*, also that the murderer was in the custody of the law, and that where heirs failed to denounce a murderer and there is a forfeiture, this forfeiture must be sued for, in which suit failure to denounce must be proven, also that the curator was without authority to employ counsel so as to bind the heirs. The Federal court decided in favor of the plaintiff. The case was tried before a jury, and the judge restricted the functions of the jury in finding how much they should pay Mr. Elstner; what a reasonable amount was, leaving the other points in the case to be argued afterwards. We insisted upon arguing the legal points in order that the court might instruct the jury in its entirety right then and there. The court did not rule the points against us then; the case went to the jury in a piecemeal way. We made no point of what the services were worth; we did not deny that the curator may have employed him, we denied his powers. We did not complain of the amount, it was a law point. Our idea was that we were entitled to have these law points passed upon before a verdict of the jury was rendered.

By Mr. LEONARD:

I do not think I filed any motion for a new trial; I would not speak positively. My recollection is we offered a record in the succession in the case of Elstner against Goldkin in the Federal court. Our plea made a point that the same cause of action was involved in the probate court. Technically I had some doubt about it for the reason that the curator represented the heirs and the claim was justly due. The points of law were very elaborately argued before Judge Boarman; I think I read some French to the judge. The argument was before judgment was rendered.

Q. Wasn't Judge Seay city attorney at Shreveport and associated with me in the Lewis case?—A. Yes, sir; on the second trial he was a witness and also made an argument in behalf of the validity of your claim.

By Mr. BOATNER:

Q. I understand, Mr. Randolph, that the only difference in the issues of the

Goldkin case and the State and Federal courts was in the State court, Mr. Elstner maintaining the right and authority of the curator to employ him?—A. He took that position.

Q. And in the Federal court that he was entitled to recover on the *quantum meruit*?—A. Exactly. I do not know that the heirs were technically parties to the first contest, except upon a theory that the curator was likewise representative of the heirs, but I, as attorney for the absent heirs, did oppose the allowance. I filed opposition, as their representative, against the allowance of this claim. (Pages 435-9.)

J. L. HARGROVE testified as follows:

By Mr. BOATNER:

Have been a practicing lawyer in Shreveport since 1873; was attorney for Goldkin, the case in which Elstner appeared as private prosecutor; gave no notice to Elstner of the case before his appearance. Either the week or the week after Goldkin was killed I was employed by the heirs. I then told Elstner the heirs would not be responsible for his services, and that I was requested to tell him so. I told the curator also not to continue the prosecution. I was authorized to represent the heirs. When the curator presented his account proposing to pay Elstner, I appeared for all the heirs, and opposed the allowance. (Pages 444-445).

THIRD CHARGE.

That Albert H. Leonard, an attorney and counselor at law, practicing in said court, boasts publicly of his influence with the court to the knowledge of and unrebuked by the judge, and that the relations of said Boarman with said attorney and his constant companionship with him have, in connection with the claims of said Leonard, created the universal opinion in the public mind that the suitor in said court who secures the services of said Leonard will obtain a favorable judgment, and in consequence thereof the said Leonard attends all the courts held by said Boarman in the State of Louisiana, and is employed either as associate or leading counsel on one side or the other of nearly every case pending in said court.

ANSWER.

Respondent says that Mr. Leonard has been known, generally, as one of his most intimate friends continuously from boyhood for more than forty years; that so far as respondent has any knowledge of the said charge, it is false and slanderous both to himself and Mr. Leonard, and that in his opinion it is not believed by any of the lawyers who have had cases in this court.

TESTIMONY.

E. H. RANDOLPH testified as follows:

By Mr. BOATNER:

Q. Mr. Randolph, do you know what the general understanding of the bar and community is with respect to the relations existing between, or supposed to exist between, Judge Boarman and Mr. Leonard?—A. Well, my answer to that would be about as Captain Bell has answered.

By Mr. LEONARD:

The papers in the Elstner case showed on their face that he was a citizen of Louisiana and that the parties named were nonresidents of the United States. On the face of the papers the Federal court had jurisdiction. The jury found a verdict in that case. I do not know the amount. It was afterwards reduced by Judge Boarman a hundred or two dollars on his own motion; think the judge stated that the amount allowed was excessive, and unless it was reduced he would grant a new trial. I think the verdict was for \$800 or \$1,000 and the judge reduced it to \$600. I think Mr. Elstner has appeared as counsel in a good many cases in the western circuit. I have not examined the court docket to see how many cases. I have not examined the records to ascertain how many cases you have appeared in at Shreveport. I know of one or two that you have had at Monroe. I know nothing about the courts at Alexandria and Opelousas.

Q. In corroborating the testimony of Capt. Bell, you say that you have formed an impression and announced the belief that the general impression prevalent is that I have what Capt. Bell calls the ear of the court, and in consequence I am

employed in a great many cases. You entertained that opinion without having made any such investigation as I have indicated?—A. Well, that sort of information is gathered like the reputation of any individual, from talking among the people of the community.

I would not hang you upon such evidence. The impression would readily yield to evidence. I never investigated it. (Pages 435 and 443.)

T. ALEXANDER testified as follows:

By Mr. BOATNER:

Will state, so far as Mr. Elstner is concerned, I do not know that I have heard much or a great deal, at least, stated about him in connection with Judge Boarman, but the general impression, so far as I know, in the community, and particularly among the lawyers, is that Mr. Leonard has undue influence with the court. I should say that in a great number of cases in which he was engaged here, the results seem to justify the opinion. I do not know of Mr. Leonard having solicited any business upon the ground that he was able to guarantee certain results; I have heard of such.

By Mr. LEONARD:

Q. Do you know how many cases I have been employed in, either for the plaintiff or the defense?—A. No, sir; I think you were employed in a large number in proportion to the cases that were filed before the court. I do not know how many cases Judge Boarman has decided in your favor; I said you have a large proportion of the cases before the court. There are very few cases before this court, and I would say out of that small number you had a large proportion. I have no idea how many suits are on the docket.

Q. You would then, I presume, be surprised if it turned out to be a fact that I have lost more cases than I have won, would you not?—A. Yes, I should.

By Mr. BOATNER:

Well, I would say that in almost every important suit that came under my observation, Mr. Leonard has been of counsel on one side or the other. I had one important case, the United States against Jones; do not think he was in that case at all. Mr. Elstner was. I do not recollect any other case that Mr. Leonard was not with me or against me; there might be some. Since Judge Boarman called my attention to it, I filed a suit with Mr. Taussig, of St. Louis, about a year ago, on some city indebtedness. Mr. Leonard was not with me in this case.

Q. How many receiverships have been ordered by this court since its organization?—A. As far as I know three or four, as far as I can recollect now.

Q. Will you state in how many of them Mr. Leonard has been counsel for the receiver?—A. Well, I think he has been counsel for the receiver in three or four cases. In one case in which Judge Pardee appointed the receiver in charge of this Houston road, Mr. Leonard was not the attorney.

Q. Was he not attorney for the receiver appointed by Judge Boarman before that?—A. I understood so; I had nothing to do with that; understood he was the attorney for the receiver appointed by Judge Boarman, but whose appointment was rescinded by Judge Pardee.

By Mr. LEONARD:

Q. I simply want to correct the statement, Mr. Alexander; how many receivers has Judge Boarman appointed?—A. Well, I say three or four, according to my recollection.

Q. What cases are they?—A. The only ones that I know, in the first place, was this narrow-gauge road between Shreveport and Houston, and the New Electric Light or Incandescent Light Company, another, and in this particular case you speak of, in which McCutcheon was appointed, that was three. Now, I don't know of any other.

By Mr. BOATNER:

Mr. Leonard was attorney for the receiver in all three of these cases. (Pages 452, 461, 463.)

EDWARD H. FARRAR testified as follows:

By Col. OATES:

There is a widespread opinion in this State, among the people and among the members of the bar, that Mr. Leonard is what is familiarly termed an ear of the

court lawyer, that possibly may be without foundation. It may be aggravated by the fact of the great personal intimacy of Mr. Leonard and Judge Boarman. Judge Boarman spends a large portion of his time in New Orleans, and when he is here he spends a large portion of his time in Mr. Leonard's office; he eats with him at the restaurant, walks with him on the street, and he is constantly with him, in his company, except when he is in Mr. Marks's company, who is Mr. Leonard's partner, and the general impression is that he is an ear of the court lawyer; that he has great influence with the court beyond any other lawyer. The impression grows out of the supposed personal relations of Mr. Leonard and the judge. Mr. Leonard is a lawyer of fair ability and stands well at the bar. He is not considered one of the leaders of the bar of the State, however, by any means.

Q. Well, is it the impression that by having the ear of the court, as you express it, he has an undue influence over the judge so as to influence him in the decision of cases beyond what the law would warrant and the facts of a case?—

A. That is the scandal which has been going around in the western district and here for three or four years.

Personally, I have never had an opportunity, aside from the facts I have detailed, to know whether Mr. Leonard has any influence with Judge Boarman or not, because I have not appeared before Judge Boarman but once, and my experience on that occasion brought me to the resolution not to appear before him again. (Pages 516, 517.)

J. C. BOATNER testified as follows:

I have had considerable business of importance in Judge Boarman's court, and I have been mortified in a number of cases to have my clients come and inform me that they had been advised that it was to their interest to employ Mr. Leonard as associate counsel. I will say I was mortified because I did not believe that any such necessity existed for some time; nor would I have objected. On the contrary, I would have welcomed the association of Mr. Leonard in a case, because I found him to be a capable, honest, and, I think, efficient lawyer. But for the motives which induced his employment with me I would have been glad to be associated with him in any case. I think, with the exception of two or three cases, that Mr. Leonard has been associated with me in almost every case of importance that I have had in this court. When Judge Boarman comes to attend the court at Monroe, if Mr. Leonard has business which requires his attention, they generally come together and stop at the same house; they are constant companions, and I suppose from that cause and from other causes the impression is general that the employment of Mr. Leonard in that court is necessary.

I desire to say that so far as my firm are concerned, we have not for several years instituted any suit in Judge Boarman's court because of the uncertainty of his rulings and proceedings and the uncertainty of his permitting counsel to argue cases in their own way and manage them in their own way, and I may state that there is a general feeling, so far as Ouachita Parish is concerned, that there is an utter want of confidence in the Federal court. I notice that it is stated in this answer that I had prepared a bill in equity to be filed in this court directly after or before these charges were instituted, I have forgotten which, and there seems to be some connection sought to be made between that bill in equity and these charges. These charges were handed to the committee long before that bill was prepared, and I prepared the bill to be filed in this court because it was a matter of necessity. I had no reasonable hope of gaining the case in the State courts and thought that the decision of the Supreme Court of the United States would be more liberal upon the principal question involved in it, and I brought it in this court with a view of carrying it to the Supreme Court of the United States. The case involves about \$100,000. If it had been unappealable I would not have brought it in this court.

There is a statement in this answer that I recommended Mr. Beattie for appointment for clerk of this court. It is not true. I did not recommend Mr. Beattie; on the contrary, I informed the judge of the court a short time before his appointment that, while I deeply sympathized with Mr. Beattie, and would be glad to see him relieved (he was then in a very uncomfortable situation), that the complaints to me by my clients had been so frequent of forced loans of money in influencing decisions of the judge, that I had utterly lost confidence in him and I did not consider him a proper person to be appointed a clerk for this court. That was a few days before Mr. Beattie, or probably the very day, that Mr. Beattie was brought over here. Judge Boarman had him brought from

Monroe to this place. The conversation occurred on the way from Mr. Hiram Monroe's house, where Mr. Boarman was stopping; up town somewhere. It is not true that I agreed to go on Mr. Beattie's bond. After Mr. Beattie was appointed clerk of this court I happened to be here in Shreveport and I received a note from him asking me to come and see him, and I called to see him and found him recovering from a very serious and almost fatal attack of illness of some kind, and he asked me to become his surety on his bond, stating that Judge Boarman had told him that he would approve his bond if I was surety on it. I do not recollect whether I declined at the time to become surety or not. If I did not, it was only because of his weak and prostrate condition and my indisposition to say anything that would hurt his feelings at that time. I had not the slightest idea of becoming surety on his bond; I never agreed to do so or thought of such a thing. That is all I have to say. (Pages 468, 469.)

J. L. HARGROVE testified as follows:

By Mr. BOATNER:

Am very well acquainted with Albert Leonard. I have listened to testimony of Capt. Bell and Mr. Randolph, and it would almost, word for word, be my testimony in respect to influence and status of Mr. Leonard and Judge Boarman's court. I think it is the understanding among the people here that the employment of Mr. Leonard in Judge Boarman's court recommends the case to the favor of the court. I do not know how long it has been so. There began a multiplicity of suits here; they seemed to be divided out to various owners, some in Texas and other places so as to give the court jurisdiction, and that was talked about very generally then, and since that time it has been general.

By the CHAIRMAN:

Mr. Leonard seemed to have charge of all these suits, and all the parties succeeded in getting their judgments. Suits were on city bonds. The Lewis case was one of them; bonds like those in that case were involved.

By Mr. BOATNER:

I can not fix the time; some of these parties owned large amounts of the bonds; may be \$75,000 or \$100,000, and he could not get into this court, being a citizen here, but if put into this court by a citizen of any other State it could not be carried to the Supreme Court. I may be mistaken about the character of the bonds. Mr. Leonard appeared for the city in the Lewis cases; it was the defendant. I do not know where the Lewis case was started. The bonds in the suits instituted by Mr. Leonard were bonds of the city of Shreveport; the general understanding was that the suits upon these bonds had been divided up so as to be unappealable and the judgment of Judge Boarman would be final, and the bonds were sent out of the State so as to give them final jurisdiction.

By Mr. LEONARD:

I do not know whether you had all the cases or not; I only say the talk has been general about you and Judge Boarman since these things occurred. I do not mean to say in so many words that the number of suits had been instituted upon such bonds and that you had won them all. I do not remember that this city bond case went to the Supreme Court of the United States. The general report through the country with respect to these suits was that Mr. Leonard had them all. There are not so many of them; there was a considerable amount of railroad receiverships and such things, a million of dollars or two, and that Mr. Leonard would get the receiver appointed, he would come from New Orleans, he seemed to know beforehand. It was the general talk that if you wanted to get a big thing through you had to get Leonard. (Pages 445-447.)

T. F. BELL testified as follows:

By Mr. BOATNER:

I am a practicing lawyer at this bar; have been since 1872.

Q. Do you recollect having a conversation with Mr. James Turner—I believe it was James—of Marshall, Tex., with reference to the employment of Mr. Leonard in a certain suit pending in the circuit court of the United States against the heirs of Scott or any other case?—A. Yes, sir.

Q. Will you please state what you said to Mr. Turner with reference to the employment of Mr. Leonard?—A. Well, this conversation was had in Marshall, Tex. I was up there on some business of the court, which brought me in contact with Maj. Turner, then a member of the Marshall bar, and associated with

him in the business that called me to Marshall. After concluding our business he then said he wished to seek my advice in reference to a matter. He went on and narrated something of the details of the case that had been pending in the Federal court in Texas, filed at Jefferson, that it had been removed and sent to Galveston—he followed the case through—it then had been moved by Judge Boarman to Shreveport, with an intimation from the court that he did not know whether he would give them a hearing there or not. He says, while the matter was resting that way, "My client got what I considered a very extraordinary letter, which," says he, "I do not understand." He said he got a letter from Mr. Albert Leonard, calling to mind of the gentlemen, the suitors in the case, the Scotts, that they had a case pending, that they had had some difficulty in having a hearing, and stating that he could be of advantage to them in that case if he was employed, and that he could insure them a hearing at Shreveport. Says he, "Now, you know this gentleman better than I do, and what would you advise in reference to the matter?" I then asked him—I said, "Mr. Turner, is your case one that can be lost?" He said, "Yes;" and I then advised him to get the services of Mr. Leonard. That was about all of the conversation. I learned afterwards that he had been employed.

Q. Upon what grounds did you advise that Mr. Leonard should be employed?—

A. Well, sir, it is understood here that Mr. Leonard has the ear of Judge Boarman as a judge. I do not know that anything worse than that was in my mind at the time.

Q. Is that the general understanding?—A. I think that is the general understanding. That is my understanding, at least, and the prevalent feeling in the matter.

Q. Is it not a fact that Mr. Leonard is employed, and has been ever since the formation of the court, in nearly every case of importance in the court?—A. Well, Mr. Boatner, I do not know that I could answer that question from my own knowledge, for I have been in the court so little. I simply say this, that I know Mr. Leonard has been employed in a number of cases in the court, and perhaps would have been no matter who was judge.

Q. Does Mr. Leonard live here?—A. No, sir.

Q. Where does he live?—A. In New Orleans.

Q. Has he any practice in the State court here?—A. He has had some cases in the State court, but no general practice.

Q. No general practice?—A. No, sir; he has had several cases in the State courts, though.

Q. His appearance here is almost entirely in the Federal court?—A. Yes, sir.

Q. I will ask you, Capt. Bell, if you will please state what is the general understanding of the people here with reference to the relations between Judge Boarman and Mr. Leonard?—A. Mr. Boatner, I do not know that I can speak of the feeling beyond the members of the bar.

Q. Well, what is the feeling among the members of the bar?—A. Well, among members of the bar it is considered that it is an advantage to any case to have Mr. Leonard as an attorney before that court.

Q. An advantage resulting from his ability as a lawyer or his intimacy with the court?—A. No, sir; an advantage beyond his ability as a lawyer—that he has the ear of the court as but few attorneys have. That is the feeling among the members of the bar.

Q. Is that of recent growth, or how long has that feeling existed?—A. Well, it has been the feeling, sir, during nearly the whole term of Judge Boarman's incumbency.

By Mr. LEONARD:

Q. Captain, I suggest to you that you may perhaps be mistaken as to the statement you made with regard to the statement made by Mr. Turner; and I do so because I do not believe that Mr. Turner would tell an unnecessary lie. I understood you to say that Col. Turner told you that he had seen a letter from me, in which I made propositions that if these parties would employ me, that I would have the case decided in my favor?—A. No, sir; I did not state that, Mr. Leonard.

Q. What did you state?—A. That he stated to me that your letter stated that you could be of advantage if you were employed in that case, and could insure a hearing at Shreveport.

Q. In other words, he did state to you positively that there was a letter from me; are you positive he stated that he had a letter from me?—A. Yes, I am quite positive of that. Oh, no; not that he had a letter, but that he had seen one.

Q. Now, the charge that an attorney has the ear of the court implies that that

attorney can obtain a judgment in favor of his case?—A. That is not what I mean by this expression, Mr. Leonard. I think this expression is well known to members of our profession. I have frequently seen lawyers who imagined, at least, that the judge had a prejudice against them for some reasons or other. Others are on terms and their relations are pleasant and cordial; and one man will say, "Well, I have not got the ear of the court." What I mean by having the ear of the court is that you are on terms that are pleasant, that you are trusted by that judge as an upright attorney, as an attorney whose observation of the principles of law has weight with him; and I do not understand that expression, as used in our profession, because it is quite a current one, implies an undue influence at all.

By Judge BOARMAN:

Q. Captain, have you practiced in this court?—A. Very little, sir; I have been in the court occasionally.

Q. How many times did you ever try before me?—A. I cannot recollect. Well, I remember I appeared here in a case brought on some city bonds; then I appeared in and tried some maritime cases. I can not now recollect others.

Q. You did not try the bond cases at all, did you?—A. No, sir; they were not tried, they were submitted.

Q. How many other cases did you try?—A. There were several tried together.

Q. How many did you try?—A. Well, I tried them all.

Q. How many?—A. I tried two, three, or four.

Q. How many were tried?—A. I think there were three or four.

By Mr. BOATNER:

Q. I will ask you, is it not the general understanding in this community that Mr. Leonard has weight and influence with the judge that no other lawyer has?—A. Yes, sir; that is correct. But in speaking to Mr. Turner I just simply saw fit—I did not speak to him with the freedom that I would to a member of our own bar—I just simply put my advice to him upon the basis of Mr. Leonard being an attorney of an acknowledged ability and having the ear of the judge, and beyond that I did not speak.

Q. Is it not generally understood in this community that a man recommends himself to the favor of the judge by employing Mr. Leonard?—A. That is the understanding among the members of the bar, and the same understanding I know some people have outside the bar, but I won't say it is general outside of the bar.

By Mr. LEONARD:

I never examined the records of this court to see how many cases had been decided in your favor. I have been but little in this court; have seen you try but very few cases in the court; have learned of your trying cases from others and by other means than seeing you do so, and the impression that is upon my mind is by hearing my brother attorneys of this bar so concurrently come to the conclusion I speak of; have not formed that conclusion from anything I know, have not been here enough; do not know that it would be a matter of surprise to learn that Judge Boarman has only decided in this Shreveport court some eighteen or nineteen cases in which you have been employed.

Q. Well, suppose that more than half of them had been decided against me, would you think I had undue influence then?—A. Well, I would go a little beyond that before I would come to a conclusion.

Q. You would go beyond that?—A. Yes, sir; sometimes a judge can't help but decide in a certain way.

I suppose that in a very large measure when this court was organized, the western district, the lawyers residing in this district were entirely unprepared to enter upon the practice in the Federal courts. I think you were district attorney at New Orleans for some years.

By Mr. MARKS:

I appreciate Mr. Leonard as one of the best practitioners I have known in northern Louisiana; one of the most active, alert, adroit, and successful, and I believe that estimate of him is shared in generally by the members of the bar. (Pages 427-431.)

T. F. BELL recalled, and testified as follows:

By Mr. BOATNER:

I was counsel in charge of the suit instituted against the city to make an appealable case. A day or two after that suit was filed Mr. Leonard came into my

office and, as well as I remember, he wanted to know what I would take for these bonds; what I would take for my bonds. Suit was filed in the name of John Caldwell, the well-known trading man in this community. I replied to him that my client was a trading man and for him to go and see him. I knew they were not for sale. If the Dorian case had been decided at that time I never heard of it, and I had been watching it, because I had bonds placed in my hands after the institution of the Dorian suit by Mr. John Horan. When they were brought I advised him to take them to Judge Hicks, that he claimed to know how to win a judgment on them, but I could not. He replied, "Well, I reckon you can watch and see how he does it and then do it the same way;" and I was watching the result of that case. That was just before suits were instituted by Mr. Leonard. Mr. Dorian lives in town now.

By Mr. LEONARD:

If you had dismissed your own motion, the suits which you had brought against the city on these bonds, I think the Caldwell case would have been dismissed, too. Before you went to New Orleans, from 1865 to 1878, your firm had one of the best practices here. (Pages 475, 476.)

J. B. SLATTERY testified as follows:

By Mr. BOATNER:

Am a lawyer, and have been practicing here since August, 1874. I can not state as to the public what is the general opinion as to Mr. Leonard's possessing influence with the court which is undue and inconsistent with the proper administration of justice. I have heard several members of the bar intimate that in conversation with them. Several, maybe three or four; do not know that I ever heard any more than that.

By Mr. MARKS:

The reputation of Mr. Leonard amongst the members of the bar, as well as the community at large, as attorney, is first class, I believe. As far as I can learn much better than the average, not as a speaker, but as a practitioner, and being successful in his cases. That impression has existed ever since 1874, and is applicable to the State courts as well as the Federal court.

By Mr. BOATNER:

He is not a regular practitioner of the State court; he was in 1874 and upwards. Of recent years, I think, he has only had special cases in the State courts; do not think he has any office here at all.

Mr. LEONARD. I do not practice in the State court. (Pages 466-471.)

J. S. YOUNG testified as follows:

By Mr. BOATNER:

Am a practicing lawyer at Shreveport. The firm of Young & Thatcher, as attorneys, has judgments against Judge Boarman, and have had for some three or four years. They were rendered three or four years ago, prior to the time when the case of the United States against Jones was on the docket. The amount was some four hundred and odd dollars, I think, with interest. When Jacobs failed, and we got control of his accounts, there was one against Judge Boarman for something over \$700, or a good deal larger than the amount we took judgment for. We took judgment for something over \$400 on his statement. We have not been able to collect that judgment. We examined carefully and can find no property in this parish that Judge Boarman owns. I found one piece in the parish of Bossier, adjoining here, and was about to issue execution, and that was transferred, and the clerk of the court informed me that he thought to Mr. Tillie or to Mr. Leonard here. The transfer prevented my seizing it. I do not know of any other judgments. I asked Judge Boarman, probably a year or so ago, to pay it, and he said he could not do it; was not able to pay it. I do not know that I know what the general opinion of the bar and the public is with reference to the relations existing between Judge Boarman and Mr. Leonard. I think that there is an impression here that Mr. Leonard has undue influence over Judge Boarman on the part of the bar and on the part of the citizens. It has existed for some time. It began to exist soon after the formation of the court and has existed since.

By Mr. OATES:

Q. What do you mean by undue influence? Give the committee some idea

what you mean.—A. Well, they seem to think that he has more control over the judge in his conduct of cases and his decisions and his actions as judge than an attorney would ordinarily have.

Q. Now, why is that? Is it from his great knowledge of the law or otherwise?—A. Well, they think that he is very intimate with him; that he has been raised with him, and they have been associated together from boyhood; they have been quite intimate all the way, from boyhood, and that they think Mr. Leonard is a man of fine ability, and even so far as his ability goes, and they think that Judge Boarman yields to his views and ideas more than he would to attorneys ordinarily.

By Mr. BOATNER:

Q. In cases where he is of counsel?—A. I do not know of any impression among members of the bar that Mr. Leonard exercises an undue influence over the judge in cases where Leonard is not of counsel.

By Mr. MCCORMICK:

Q. Is the influence you speak of as being an undue influence exercised by Mr. Leonard in the trial of cases by argument and by skill in the conduct of his cases, or do you mean something else?—A. Well, the feeling is that there is that and something else. It is the feeling on the part of some I have heard talk about it, that he has a great influence, but I won't say that is the feeling of the majority of the community, or a majority of the members of the bar; that is simply with reference to some individuals.

By the CHAIRMAN:

Q. What do you mean by "corrupt;" that it makes traffic and gain out of his influence with the judge?—A. Well, that is what I mean, but I do not know what others mean. There is a feeling firm in the community that Mr. Leonard obtains business and patronage upon the strength of his connection and association with the judge and influence with the judge. Mr. Leonard has been here a constant practitioner since the formation of this court, and has done a large practice.

By Mr. LEONARD:

I think this court was first organized in 1881. You resided here when I came here. I think then you resided in New Orleans after that time. I know you were the attorney of the United States and held that office in New Orleans for a number of years; I think up to about 1885. I do not remember half a dozen cases that you ever had at all. I do not call to mind any case that you appeared in while district attorney.

By Mr. BOATNER:

Mr. Leonard appears occasionally in cases at this bar.

Mr. LEONARD. I do not practice in the State courts at all. (Pages 487-490.)

N. C. BLANCHARD testified as follows:

By Mr. BOATNER:

Q. Mr. Blanchard, I will ask you to state what is the general understanding or belief among the people with respect to the relations which exist between Mr. Leonard and Judge Boarman?—A. In respect to what, Mr. Boatner?

Q. In respect to the relations about court business.—A. Well, sir, ever since this court was established, the western Federal district, or very shortly after it was established, at least from the time that Mr. Leonard perhaps ceased to be district attorney for the eastern district of Louisiana, from that time until now it has come to my knowledge from various sources, both from members of the bar and from the public outside of the members of the bar, that Mr. Leonard is looked upon as an attorney specially favored by the court, and that it is necessary in many of the more important cases to secure his services in order to have the business transacted and to win cases in the court. That has come to my knowledge both from members of the bar and parties outside of the bar. I think it has come to me largely in my position as Representative in Congress, at least to some extent it has; it has come to me as a citizen and it has come to me as a lawyer.

By Mr. LEONARD:

Q. Mr. Blanchard, did you ever look at the docket of the court to see how many cases I have been in?—A. No, sir. I will state this, while I am a member

of the supreme court, a member of the bar of the Supreme Court of the United States, I have never personally come before Judge Boarman's court.

Q. You have no personal knowledge, then, of the number of cases I have been in?—A. No, sir. (Page 467.)

A. H. LEONARD testified as follows:

In the Shreveport section of the court of the United States of the western district of Louisiana, Judge Boarman has decided in my favor, with the exception of the consolidated Shreveport suits which did not enter into it, nine cases; one of these cases was a confession of judgment, and two cases which apparently seemed to be decided in favor of my client were really decided against him, for the reason I brought two suits against the parish of Natchitoches on its indebtedness, and the object in bringing the suits was not to obtain a recognition of the debt, but a mandamus to enforce payment; the parish did not dispute the debt in particular, but they would not pay, and I applied for a mandamus, which was refused, but judgment was rendered in favor of the plaintiff for the amount claimed against the parish, and that is included in the nine judgments, and I lost eight. With the exception of the city cases, which I have always held as one transaction, I have been retained in this court, in the Shreveport section, in forty cases altogether.

Col. OATES. Does that mean retained in that number which other lawyers had brought?

A. No; some I brought and some I was retained to assist in; I mean I have appeared altogether as counsel in that number.

Q. You mean to say you have appeared?—A. Yes, sir; as counsel in forty cases. Now, the total number of civil cases on the docket of the Shreveport section is 219; criminal cases, 265. At Monroe, civil cases, 210; criminal cases, 265. At Opelousas, 80.

Q. What time does that cover?—A. That covers the entire period of time from the organization of the court until now.

At the Monroe section of the court I have appeared in eight cases; in addition to those I was retained in some cases against Gershen and Stein by some parties who claimed to be the owners of property attached in those cases. Mr. Boatner was under the impression, first, that there were a hundred of those cases, and second, that there were fifty of them. I think, as a matter of fact, there were fourteen or sixteen. I have got a memorandum, and I will get it directly. Of these cases, the Gershen and Stein cases, I knew nothing about them, except so far as certain property had been attached in the United States courts. I do not know how my employment came about, but my partner, Mr. Marks, was the person who first informed me that we were retained in the cases. I was informed by Mr. Marks that we had been retained in these cases. I considered them all one case. We were to get a considerable fee in that case. I believe that was the understanding, we were to have liberal compensation. As a matter of fact we only got \$250, which was the retaining fee, and nothing else ever was paid.

In the case of Wood and Lee against Cohn and others, that was one case. That was one case when I came into it, and consolidated afterwards. I first learned of the employment of the firm of which I am a member—I have been, I will state, since I was removed from the office of United States attorney I have been practicing law, with headquarters at New Orleans, in the firm of Leonard, Marks & Brown. My knowledge of the fact that our firm was employed in that case came also either through Mr. Marks or came to me either through Mr. Marks or Mr. Brown, my partner; and I understood that Mr. Cohn came to us, sent there by the firm of Wolf & Marks, the Marks in that firm being a brother of my partner, Mr. Marks.

□ In the case of the Heirs of Pickett against Foster, Mr. Boatner desired me to appear in that case and make an argument in it, and, as I understood it, he desired me simply for the purpose of arguing the case before the court. The court was to meet here. The case belonged to the Monroe section of the court, but had been sent over here for argument, and he desired me to assist him in making the argument of the case. There was very little time for preparation, and the fee was small, I really forget whether \$100 or \$150, but I went into the case simply to satisfy Mr. Boatner.

In the case of Young against Duncan, it was represented by Messrs. Steele & Garrett, at that time a firm in Tensas Parish, and also by a firm—no Steele & Garrett, that is right. These are gentlemen whom I have known for a good while, and I am well acquainted with. They wrote me and asked me if I would

take charge of the case; that they could not go into the Federal courts. In that case I received a fee of \$250.

The case of the British and American Company against Goldsten, I was retained by Judge Mellen, of New Orleans, who was the attorney of the British-American Company, and he said he could not go into these courts, and he would like for me to take charge of the case. In that case I received a fee of \$250.

In the case of McElhany against McAllister, Messrs. Steele & Garrett, the firm to which I referred, wrote to me that this was a case that involved all the property of a lady whom they represented to be very unfortunate, and they sent me at the same time a fee of \$35, and said that she had no more or could spare no more, at least, and asked me to take the case, which I did. In the case of Reeves against Caldwell the fee was \$500. That case came to Mr. Alexander—Mr. Tom Alexander, who is a witness here. I happened to be in Shreveport at the time, and he sent for me and asked me if I would take charge of the case, and we divided the fee.

The case of Cochran against the British and American Company, recently decided, I have not yet received any fee. That came to me through Mr. Mellen, a lawyer of New Orleans. And I have recently been retained in the case of Sanders against Sanders, which is now pending in this court.

The gentlemen who have testified in regard to what they supposed to be the general impression of the relations between Judge Boarman and myself, and their effect upon the judgments of the court, are mistaken about that with reference to Monroe and Shreveport, and particularly so with reference to Monroe. This court commenced in 1881, if I recollect right, it was organized in 1881; at all events, the business commenced in 1882. I do not think that I had any employment before the new court at Monroe until after I was no longer district attorney of the United States; I do not think I appeared at all; I did not seek any practice or want any practice in any of these courts; I had no cases at Monroe; I never brought any cases there, and had only been retained in the cases I have mentioned, and it is impossible that any such impression could have existed at Monroe, where I did not appear in any cases. The most of these cases in which I appeared at Monroe were against—I was opposed to Maj. Wade R. Young, whose letter has been read to the committee. Now, at Monroe, there are on the docket 210 civil cases and 265 criminal cases. At Opelousas, the firm of Leonard, Marks & Brown appeared in the case of ———— against ———— and others; that case I knew nothing about. At the Opelousas section of this court, the firm of Leonard, Marks & Brown appeared in the case of ———— against ————; that case I knew nothing about. It came to Mr. Marks, and he has managed it all the time.

Our firm was also retained to assist Mr. Bradford in some timber cases, the most of which we lost—some of them by myself, some of them by Judge Marks. That employment, so far as I know, came to Mr. Marks, who was supposed to have some especial knowledge of land cases, he having been receiver of public moneys and knowing about entries of land, etc., and he appeared at one term of court to assist Mr. Bradford and I appeared at another; but we appeared in these cases at the request of Mr. Bradford, and the fee was, as usual, in these cases where you assist attorneys, nothing. We got \$250 in that case. In the Opelousas court there are eighty-seven cases on the docket of that court. At Alexandria I had no cases. Now, the total cases on that docket of these courts are: Civil cases, Shreveport, Monroe, Opelousas, and Alexandria, 543; then there are 543 criminal cases. We have had no criminal cases at all, except so far as we defended these timber cases, which were brought against certain small owners, and there were also some indictments against some of their employés, which followed.

As a matter of fact, while I was practicing at the bar in Shreveport I had a much larger practice in the State court than I have had in Judge Boarman's court since it has been organized. I do not believe that a single case has ever come to me by reason of any supposition that I exercised any improper influence over the court, and I think there are reasons which make that apparent. In the first place, I lived in this country all my life and practiced law here for quite a number of years, and I was appointed district attorney on the recommendation of every witness who appeared before you, every attorney, with the possible exception of Mr. Young, Col. Young, who was not at that time a member of this bar. And in that recommendation I was referred to in language which I do not care to repeat; I was well known in this community; I had had experience in the Federal courts, and the attorneys throughout the State, with some few exceptions, notably Mr. Boatner for one, were not disposed to enter into Federal

courts. It was novel to them. Of course there was nothing particularly difficult in it except the labor of familiarizing themselves—at all events they did not want to go in; therefore I have not the slightest idea that the cases have come to me for that reason. There is no other reason why they should come to me.

Judge BOARMAN. Mr. Wheaton was my clerk while I was on the State bench?

A. Elected clerk before you became a judge and afterwards.

Q. He was a very old gentleman?—A. Yes, sir.

Q. Was he not an invalid and confined to his bed?—A. Yes; I can state the facts, which I suppose you want brought out. Mr. Wheaton was a man who was in many respects exceptionally qualified for a clerk, and he was, as Judge Boarman has said, clerk while he was judge, and also clerk before that time for some years. He was a man of known integrity, and unfortunately for him and his friends he became—he had a chronic disease, gravel or something of that kind, and had to submit to several operations, and for a long while, a period of many months, he could sometimes get out, but in the main was confined to his room, and for a long while during that stage of his disease was confined wholly to his room and finally to his bed for months. Well, owing to the relations which existed between him and Judge Boarman, the judge was desirous, of course, during all of this time (Mr. Wheaton was hopeful himself, although his friends were not much) he was desirous—at least he did retain him, and actually acted as clerk himself at one term of court at Monroe simply because Mr. Wheaton could not attend there.

By Mr. BOATNER:

Eighty cases appear on the civil docket at Opelousas. My impression is that most of them are Government cases. I think there have been very few private cases; am the party who was of counsel in the bond cases to which reference has been made. I did not solicit employment in those cases. I did not state to the holders of the bonds that I was able to guarantee what the judgments would be, and that I would take the bonds for suit and pay the costs if they would intrust the cases to me; but this is what I did: I made it known publicly that I was entirely satisfied and confident that the payment of the bonds could be enforced, and the parties who held the bonds came to me, and in addition to that I probably made it generally known, but the first of it came from parties who had the bonds; they came and talked with me about it, and I gave it as my opinion, of which I entertained scarcely any doubt, that the payment of those bonds could be enforced, and I took the case for a contingent fee. There was nothing said about costs. As a matter of fact I did not advance the costs; the costs were not paid until the judgments. Here is the way the costs were advanced: Mr. Wheaton owed me several hundred dollars in addition to all the costs. He got the money from me at various times during the after part of his life. I never had any settlement or advanced any costs in any other way, but I considered the costs were paid in that way. He offset the costs with what he owed me, leaving him still in my debt.

These suits were instituted in the year 1884. I was living at the time in New Orleans. The Dorian case was instituted before I instituted these suits; it had not been tried; was standing on the docket. I do not think I had any consultation with Judge Boarman about the Dorian case. I knew what his opinions were in regard to the bonds exactly. What I wanted in making public my opinion about these bonds was to obtain employment in these cases. I ascertained the judge's views from the fact that he was city attorney when the bonds were issued and favored their issuance, and knew that he had held that the city had power to issue the bonds. I knew that the supreme court of the State had reversed that decision. I think I was satisfied at the time of the institution of the suits that as far as Judge Boarman was concerned I had what you might call a dead shot. I brought the suits in unappealable amounts because I knew his decision would be final and I thought it would be in my favor. There were a number of these suits in which the bonds were reported to belong to the same persons, yet I brought a number of the suits in the names of the same persons. My object in splitting up these suits was so that they would not be appealable. I wanted the thing to terminate in Judge Boarman's court.

The last cases which I instituted, my recollection is, in the State courts and removed into this court were none of them of amounts which gave the supreme court jurisdiction. That was intentionally done. I brought them that way in order to have final judgment in Judge Boarman's court. I do not think I stated to any holder of these bonds that I would guarantee a judgment in his favor. I

gave every assurance that they would be decided in his favor; I was very confident of it. The parties who placed those bonds in my hands did not have themselves any faith in the matter at all. The city refused to pay and the supreme court of the State had decided against the validity of the bonds. I do not think any particular assurance on my part was necessary to get the bonds. I think I was the only attorney that appeared to have any faith that the money could be obtained and there was no assurance necessary on my part. Haven't the slightest doubt that I told them I was going to win the case; I was certain of it. My contract was for a large contingent fee. I think Judge Boarman knew of my contract; it was pretty generally known all over the community. I opposed motion made by the defendant for the recusation of the judge; I was pretty much annoyed because it was not tried. I considered that I had a right to have the cases tried before competent judge, before whom they were then pending, and I did not want them to be sent to Judge Pardee or any other judge. I certainly considered it consistent with judicial propriety that a judge who had advised and been of counsel in the issuance of these bonds and who had prejudged the question and whose opinion upon the question was publicly known would sit as a judge of last resort in a case of that sort, because that is the law of the land.

A judge can try a case brought before him unless by some reason he is declared by law incompetent. There is no reason which made Judge Boarman incompetent to try these cases. Therefore, if I had seen fit, I think I could have compelled him to try them. In the first case instituted a motion for recusation was presented to Judge Boarman, in which I insisted he was not recused, but he so manifestly desired to have the cases tried by somebody else that I consented that the cases might be transferred to Judge Pardee. When Judge Pardee dismissed the cases for want of jurisdiction, I then instituted the suits on these bonds and removed them to the United States circuit court and I brought them in unappealable amounts. They filed their motion again for recusation. I did not want the case to lay there; I had faith in my side; so I went to Mr. Alexander. He saw as well as I did the judge did not want to try the cases. He said he was entirely confident that all he wanted was to go to the Supreme Court of the United States. In ten minutes we had entered into an understanding, embodied in the record. These are, as Mr. Alexander has testified to you, the most important cases in which I had any interest in the court.

By Col. OATES:

These suits were in the name of nonresidents. I brought them in the State court and then transferred them, because I thought the cases could not be instituted originally in the circuit court, but could be in a State court and removed to the Federal courts. Pleas were interposed denying the ownership of these plaintiffs, and that was embodied in the agreement made between myself and Mr. Alexander. In other words, it was waived as well as the incompetency of the judge.

By Mr. McCORMICK:

This agreement did not cover the entire amount of the bonds, but it was agreed that I should put in suit directly in the Federal court all the other bonds placed in my hands for collection, which I did. This was intended as a test case to determine all the suits under my control. None of these bonds prior to that time had been collected through the circuit court of the United States in unappealable amounts.

By Mr. BOATNER:

The Dorian case was not appealable. These cases went to the Supreme Court and the judgment was affirmed on an equal division, and that was the conclusion of the whole matter. After the decision of the case by the Supreme Court some thirteen bonds were placed in my hands for collection, on which I instituted suit. However unfortunate Mr. Alexander may have thought it to be that there was a vacancy on the bench, the city attached no importance to that extent, but consented to a judgment, accepting the decision of the Supreme Court as final. That was not the agreement; the agreement referred to the bonds in my hands at that time. The agreement is in the record and speaks for itself. I do not know whether the city was aware of the fact that this suit on the eleven bonds of a thousand dollars each was not covered by the agreement with Mr. Alexander. I did not communicate with the city except through its attorney, Mr. Alexander. I think Mr. Alexander did not represent the city in this last suit. I think Mr. Land did; they were represented by the city attorney.

By Mr. McCORMICK:

I think there must have been issued altogether one hundred and one or one hundred and two bonds, and of those a few have disappeared. At the time I entered into this agreement I held thirty-eight bonds. These particularly were payable to bearer and there was no registry of them.

By Judge BOARMAN:

There is a difference between the bonds of the gas company and the bonds I sued on for labor done on the streets. The gas company bonds were for \$500 each, and they were issued in payment of one-fourth interest in stock of gas company. The bonds on which I brought suit were issued on request of taxpayers to make improvements on the streets. The defenses of the city were only two, first, *ultra vires*; second, that under the statutes of the city the city can not issue any obligations for the payment of money and incur any debt without providing the means of paying it, but I put in full proof that the bonds were issued for work actually done, which inured to the benefit of the city. In a case which I brought against the city of Shreveport, it was claimed that a Federal question was presented which gave Judge Boarman's court jurisdiction, to wit, that at the date of said contract the law of Louisiana provided sufficient means and had remedy for the enforcement of all rights arising, but that article 209 of the constitution of Louisiana, subsequently adopted, had impaired the obligation of said contract by destroying all remedies for the enforcement of some of these, viz, of limiting the municipal taxation through said State, for all purposes whatever, to 10 mills on the dollar valuation. The petitioner averred that he was entitled to have said article 209 declared null and void so that he might have a remedy by means of which he might compel said city to pay its indebtedness to him. That point, as I understand, was first suggested by Judge Billings, of the eastern district of Louisiana, a profound jurist, in my opinion, in the case of Sawyer against The Parish of Concordia.

By Mr. McCORMICK:

The question in the Sawyer case was exactly the same and he subsequently maintained jurisdiction in the case of Dorian against the city of Shreveport. It was made on bonds similar to those on which I instituted suit, on exactly the same grounds.

By Mr. BOATNER:

I based jurisdiction in the Federal court in the first suits I instituted on the Shreveport bonds on the same ground. Those were referred to Judge Pardee and he held there was no jurisdiction, and it was before Judge Pardee's decision that I instituted this suit against the city of Shreveport some time before. The case of the city of Shreveport was decided some time after Judge Pardee had thrown out those cases. I guess I did know at the time I drew the petition in the case that the Supreme Court of Louisiana had repeatedly decided that the article of the constitution which I attacked did not relate to debts which were due and that they had decided that express question of taxation in reference to the city of New Orleans. That was the reason I thought there was a Federal question in it. The suit was instituted long before Judge Pardee had made his ruling in the bond cases.

I did not appeal from Judge Pardee's decision; I had a much more speedy remedy I thought. I did not acquiesce in his judgment. He only dismissed the case on the ground of jurisdiction, and I thought it a quicker remedy to transfer the cases to nonresidents. I will answer that the holders of the bonds in those suits were the owners, but I will state that it is a question that I can not go much further in. I decline to answer further questions in regard to that. I had the case up for trial at the last term of the court here which Judge Pardee came and tried. I had agreement with Judge Howe as to how the case was to be tried, but Judge Howe was this way, it was always inconvenient with him to go away, and he always came to me to ascertain whether or not it was necessary for him to come here. Sometimes I told him not to come, other times he had better come. We had no particular agreement about it, but it was understood between Judge Howe and myself that we would be here to try this case. We had no agreement upon a statement of facts; do not think we had agreed upon a rule of evidence; do not think we had an agreement with reference to the evidence in the case. I knew what his evidence would be and I think he knew what mine would be, because we tried a previous case involving exactly the same thing. When Judge Pardee came the case was called for trial. I think I said I was not prepared to try the case, and Judge Pardee ruled me to trial, and

I dismissed the case. I did not make a showing for a continuance. I did not tell Judge Howe it would be necessary to come up that I was going to call that case up, but if I had told him not to come he would not have come.

By Judge BOARMAN:

The same case of jurisdiction was brought up in the case of Jacobs against the city of Shreveport and tried by Judge Pardee. I do not remember whether the opinion of Judge Pardee was published in the same law book in which your opinion in the Dorain suit was published. I am not sure his opinion was published, yours was, I know. Pages 492-504.

WILLIAM WIRT HOWE testified as follows:

By Col. OATES:

I reside in New Orleans; am a lawyer. I know Judge Boarman and Mr. Leonard. There were two cases pending in the United States circuit court for the western district of Louisiana at Shreveport last winter, known as John B. Crooks against the New Orleans, Baton Rouge and Vicksburg Railway Company, and others, and Everett H. Carter against the same defendants. These were record suits on certain bonds issued by the company claimed to be liens on certain land granted by an act of Congress, March 3, 1871, and patented to the New Orleans and Pacific Railroad Company. The object was to assert and rank the different liens on that grant. I was associated with Messrs. Dillon & Swayne, representing the New Orleans and Pacific Company, and Mr. Dillon and Mr. Alexander, of New York, trustees of the land grant and mortgage of the New Orleans and Pacific Company.

The issues were framed some time in the year 1889. There was an agreement or note of evidence taken as to the trial of that case at that particular term. Mr. Leonard and myself, in connection with Judge Dillon, prepared notes of evidence or stipulations setting out the agreed facts, and offering in evidence certain documentary testimony, which was deemed pertinent by both sides. The understanding was that Mr. Leonard and myself would go to Shreveport at the February term, 1890, and the cases would be heard. I went; my recollection is I arrived on Saturday evening. I was also counsel for Neil McDonald in the case of the Union Trust Company against the Shreveport and Houston Railroad Company, consolidated cases. My recollection is that I went immediately and had these two cases of Crook and Carter set down on the daydocket for Monday, the first day of the term, and notified Mr. Leonard that I would go on to try the cases. On Monday morning I went into court at the opening, and Mr. Leonard appeared for the complainants, Judge Pardee on the bench, the cases were called. I announced myself ready, and Mr. Leonard arose and moved to dismiss his suits. My recollection is that I protested, and desired to go on and try the cases, but Judge Pardee held that of course the complainant had the right to dismiss, and there was a decree of dismissal prepared during the day in both cases and signed by the judge, I think, that evening. The next day, or the day after, I returned to New Orleans.

I do not know whether Mr. Leonard knew at the time we made the agreement and went up to the court that Judge Pardee would sit on the hearing. Do not think there was any mention made whether Judge Pardee would be there or whether the cases would be tried before Judge Boarman. My recollection does not serve me very well in regard to that matter. I would hardly feel justified in stating as a witness any reason that Mr. Leonard had as cause of his dismissal beyond that he did not wish to try the cases. He has never renewed the suit. I could only say that the impression that was produced upon my mind was that Mr. Leonard did not desire to try these cases before Judge Pardee. I do not recollect any language that he used to me in that matter. It may have been—whether it was remarks or the general impression produced by what he did, that impression was on my mind, that was the impression produced of all the circumstances of the case.

By Mr. MARKS:

The case of Crooks was appealable beyond a doubt. I think the Carter case was appealable, though I believe there was an idea, perhaps, on the other side that it was an unappealable case. Judge Pardee has presided several times over the circuit court. If I recollect rightly he was appointed by President Garfield. I can not say that was the first instance in which he sat in the circuit in Shreveport. So far as I know it was. Now, that I think, my impression is, that he

had been there before. The reason I mentioned the case of the Shreveport and Houston Railway was, that Judge Pardee went up on this occasion in February last to sign an entry of decree in that case, that had to be done in open court. I do not know the personal relationship existing between Judge Boarman and Mr. Leonard. (Pages 508-10).

FOURTH CHARGE.

That said judge has used for his own purposes the funds paid into the registry of his court, and has unlawfully and corruptly failed and refused to decide causes in which the funds in dispute were or should have been in the registry of his court.

ANSWER.

Respondent denies all the allegations therein stated or intimations made therein. He avers that no facts now exist, or heretofore at any time have existed, or that any things are known by complainant or any one advising him, upon which now or at any time heretofore any such charge or similar charge could be truthfully predicated. He avers that said charge is wholly untrue, and believes from what he has been advised that complainant makes and states such charge maliciously and without professing to have knowledge of any fact which would warrant anybody not a reckless slanderer in making it. He avers that he believes that complainant makes said charge to set on foot a false and slanderous report with which to officially injure and personally annoy your respondent.

TESTIMONY.

E. T. LAMKIN testified as follows:

By Mr. BOATNER:

Am an attorney and reside at Monroe, La. I represent Charles E. Pfaffbach, under whose libel steamboat *Prince* was sold. The boat brought \$1,500. The boat was sold the latter part of October or the first of November, 1887. The first decree that was rendered was in October, 1889. That was four hundred and twenty-odd dollars, including interest and costs, and \$20 proctor's fees. The case, in fact all the cases against the *Prince*, were tried and judgments rendered in October, 1888. I also represented McGlinn, Trunsler & Sweeney, who were interveners for small amounts. The judge said he would not sign a decree in these cases, because they were interveners and the other parties might appeal, but told me to wait until the expiration of ten days and if no appeal was taken he would write up a decree embodying an order on the registry for the several sums.

I forwarded the decree to Beattie, clerk of the court, and requested him to hand it to the judge for signature. He acknowledged receipt of it, and said the judge would sign it in a few days. Some time after he wrote me that Judge Boarman was absent. Wrote him again about it, and he wrote me the judge was absent. So in April, 1890, I called Judge Boarman's attention to the fact that he had not signed the decree. He could not find it, so I prepared another. He told me he had no recollection of ever having rendered any such judgment. I called his attention to what had taken place at the October term, 1889, and the clerk said I was correct. Judge Boarman directed the clerk to bring the papers over with him and he would look into the matter, and if such was the case he would sign the decree. I heard nothing more from it for some time. Mr. Beattie wrote me that Judge Boarman was holding court at Galveston or somewhere in Texas, and as soon as he returned he would get him to sign the decree and send me the money. The money was sent me perhaps the last of April or the first of May. (Pages 476-7.)

H. H. RUSSELL testified as follows:

By Mr. BOATNER:

I am an attorney at law. I represented the libellants in the suit in admiralty in which the *Prince* was sold. That case has been on the docket since 1887, I think. So far as I know there has been no judgment with reference to the parties I represent for or against them. There was no contest, to my knowledge,

against their claim by anybody except as to rank, and I know of no contest as to rank for the balance of the funds which should be in the registry of the court. I think that case has been submitted twice. My recollection is that the boat was sold in October, 1887. The case was fixed for trial at the following term of the court, but court adjourned before the day was reached; then the case was argued at the October term, 1888, and the judge remarked that he would appoint the clerk as master and for him to investigate the claims. The clerk made a report, and in April of the following year at the next term of court at Monroe, the case was called up and at the suggestion of the court we argued it, and Judge Boarman remarked that he would take the papers with him to Shreveport and decided the case in chambers with the consent of the parties, which was given, and asked the counsel and proctors in the case for a brief. So far as I was concerned, I filed my brief within a week and that was the last in which I had any personal knowledge of the case. I do not know the amount of balance there should be in the registry. I know of no controversy with respect to that balance.

By Mr. LEONARD:

My claim was a merchandise account. If Judge Boarman decided it was a lien on the boat I do not know it. There is evidence in the record to show that the owners of the boat had asked the holders of these claims to have the boat sold. Still that would not constitute a maritime lien.

By Mr. BOATNER:

The boat was sold under a libel suit of Mr. Pfaffenbach. The owners of the boat made no opposition to my receiving the balance of the funds after paying these privileged claimants. They consented to that, yet that fund remains in the registry of the court. I think there have been some payments made under the judgment rendered in favor of the privileged claimants.

(Certain papers were here offered by Mr. Leonard. Pages 490-492.)

J. B. BEATTIE testified as follows:

By Mr. BOATNER:

Am clerk of the United States court, western district of Louisiana; succeeded Mr. Wheaton. At the time of my succession to office there was money in the registry of the court; it was in Judge Boarman's possession; there was \$1,000 or \$1,100. Mr. Wheaton died 20th of October, 1888, and I was appointed 29th of November following.

After my appointment, some time in March, 1889, the money was paid over to me. My bond was approved the latter part of February. I do not know who paid it to the judge. There was no statement accompanying the payment by the judge as to the different funds to which this money belonged, and I had no record of the matter; I merely held the money subject to the order of the judge, to be paid to whoever he directs it; the most of it has been paid, the balance is on deposit at the Commercial National Bank as registry of the court by verbal order of the court. I knew of no other order. I believe Mr. Wheaton kept a book showing the receipts and disbursements of money coming into the registry of the court, but it was not turned over to me. I understand from his daughter the book was taken by him to Kentucky before he died. I have written to her repeatedly and never received an answer. I was deputy clerk when the *Prince* and *Laforce* were sold under the order of the court. The first boat brought about \$700 or \$800, and the *Prince* about \$1,300. Except about \$20 *Laforce* funds paid out by Mr. Wheaton, the *Prince* funds have been paid out during my administration. All this I paid Mr. Lamkin; \$427 in one case; I have his receipt in another case for \$195 and some cents, and Judge Ray's receipt for \$75. That makes \$729. The money was paid out under decree of the court. There is \$300 now in the registry of the court. The first judgment was signed at the October term, 1889, at Monroe. (Pages 450, 451.)

J. F. UTZ testified as follows:

By Mr. BOATNER:

I live in Shreveport, and am a merchant and member of the firm of Utz & Smith. Mr. J. W. Wheaton, clerk of this court, kept a private account; that is, a personal account with us.

By Mr. OATES:

Q. You know whether or not he deposited with you to the credit of that ac-

count moneys which came into his hands as clerk?—A. Well, I can not say that I did. He would come down there while clerk with sometimes \$200 or \$300, and I think he had at one time \$400, and he deposited it there, and it went to the credit of John W. Wheaton. While he was clerk of the court his office was over our store.

By Mr. LEONARD:

□ He was not engaged in any other business and only had his salary as clerk of the court. He paid me as high as \$400 at one time. I have a statement of the account with me.

By Mr. McCORMICK:

This account was his private account with my firm. It embraces all the transactions and the time he commenced to deposit with us.

By the CHAIRMAN:

He owned, I think, one piece of property here. He occupied it as a residence; was not engaged in any business except that of clerk that I know of. The statement shows how frequent he made these deposits; I do not recollect how frequent; my bookkeeper kept the account; the deposits were always made in money. I think I can be positive about that. I was not familiar with Mr. Wheaton's business; I had no means of knowing where the money came from that was deposited. His reasons for depositing with us, he said, was the Government did not furnish him any safe or vault. He would say: "I have no place to leave this money; I will bring it down with you; I will take it out in a day or two." I deal in hardware. We rented one of our upper floors to the Government for a court room, and he had his office upstairs. I was not doing a banking business at the time; we kept this account with him as a matter of convenience. It is a very common thing for people to come and leave money with us, or with other merchants. I have no recollection that Mr. Wheaton ever deposited any money with us before he became clerk of the court.

By Mr. BOATNER:

On February 13, 1888, Judge Boarman brought this order to our house and was paid by check, \$471.64, the balance remaining to the credit of J. W. Wheaton: "Shreveport, La., February 12, 1886." (There was an error here in making up the draft.) "Messrs. Utz & Smith. Please give Aleck Boarman the money deposited by me with you. J. W. Wheaton." It was paid by check on the 13th day. The date should be 1888. This was about two years, I think, before Mr. Wheaton's death.

By the CHAIRMAN:

The last deposit was in December 6, 1887. The date of the order to Judge Boarman is February 12, 1886. My bookkeeper says the check shows that this draft was paid February 12, 1888. That covered all that remained in our hands; no deposits were made afterwards.

By Mr. BOATNER:

Judge Boarman never drew any money on this account, only that one item.

Q. I do not mean by checks, but by going there with Mr. Wheaton and Mr. Wheaton getting the money and giving it to him?—A. Well, I do not know. I perhaps would not be cognizant of that fact; I do not handle the money; the bookkeeper handles the money. That is the only item the account shows was paid to Judge Boarman; am not able to give the date of Mr. Wheaton's death.

By Mr. LEONARD:

Mr. Wheaton was clerk of the State court for quite a number of years. I understand that is a lucrative office. When I first knew him twenty years ago he was a bookkeeper and afterwards clerk of the district court; after that he was revenue collector, and while revenue collector was appointed clerk of the United States court. He was quite ill for a number of months prior to his death; in fact, for a long while. (Pages 483-486.)

W. F. MILLSAPS testified as follows:

By Mr. BOATNER:

My residence is Monroe, La.; occupation, editor of the Telegraph Bulletin; was a practicing lawyer about 1885, 1886, and 1887. I was counsel for a number of creditors of ———, of Monroe; there was an agreement between the par-

ties of record. Judgments were withdrawn and agreed upon, but I met with delay in getting the judgments signed. I think the delay was from ten days to two weeks; was naturally irritated about it; it was a consent matter in which nobody had any interest except the parties to the record, and I requested the kind office of my friend, Mr. Elstner, who I knew had access to Judge Boarman. He assisted me in getting the judgments signed, for which service I afterwards modestly remunerated him. J. W. Wheaton, clerk of the court, paid me the whole amount with the exception of a small sum ordered to be reserved by Judge Boarman for costs; record shows that sum to be \$77; the money was paid, I think, about the 15th of July, 1877. Doubtless there were some objections urged by Judge Boarman for not signing the judgments, but I can not recollect them. That cost money has never been paid out that I know of. (Pages 447-449.)

C. A. BOATNER testified as follows:

With reference to this matter which is now particularly under investigation, I will state that I was of counsel, or rather my firm was of counsel, for the defendants in the cases referred to by Mr. Millsaps. They were on the docket of the court for several years, and we reached a compromise or agreement with reference to them, by which a fund which was in the court should be divided between Mr. Millsaps' clients and some intervening creditors who had claimed a lien upon this fund or upon the goods of which this fund was the proceeds. Mr. Millsaps prepared the judgment which he submitted to Mr. Hudson, who represented the interveners, and the judgments being in accordance with our agreement, I was requested by Mr. Millsaps to present them and ask the judge to sign them. My recollection is that I presented the judgments to the judge on the first day of the term, with the statement that these judgments embodied the agreement which had been entered into between all parties to the suit, and that I had been requested to present them for signature, as I was attorney of record for the defendants. The judge stated that he would take the judgments and examine them. My recollection is that I called his attention to the judgments on the succeeding morning—and the succeeding morning—I am certain that I called his attention to them on the succeeding morning, and I think on the following—I am not certain about that; and each time he stated that he would give the matter consideration, and I then informed Mr. Millsaps that I was going to leave town, that I had made the statement that the judgments were satisfactory and represented the agreement between the parties, and that I did not consider myself bound or that it was necessary that I should remain here any longer. (Page 449.)

MURRAY F. SMITH testified as follows:

By the CHAIRMAN:

I am 40 years of age; I reside in Vicksburg; am a lawyer; I appear in all the courts; have practiced in the Federal court in this State, the western district; I had one case in that district. The case of O'Neill or O'Brien, I forget which, against the *Parisot* and her cargo. The libellants for salvage reside at Natchez, Miss. The steamer took fire on her way down stream loaded with cotton; that was above the city of Natchez. My impression is that the crew had abandoned her. This tug went to the burning boat and towed her to a sand bar where she sank in shallow water. A great part of the cargo, machinery, and the hull were thereby saved. The owners of the tug libelled the cargo, machinery, and wreck of the *Parisot* in the United States district court for the western division of Louisiana, the hull having stranded on the Louisiana side. We settled with the underwriters of the cargo, and there was no controversy about that. The hull and machinery of the *Parisot* were sold under an interlocutory decree and the proceeds paid into the registry of the court. My impression is the net amount after deducting costs was something like \$650.

This suit was instituted in the fall of 1883. I can not speak with definiteness as to the amounts. After we found what the new amount in the registry was it was such a small amount that as proctors for the libellants we proposed to the owners of the boat and the underwriters of the hull that we should withdraw the fund from the court by consent to avoid expenses and we were to divide it on the basis of one-half to the salvors, one-fourth to the underwriters, and one-fourth to the owners of the hull. We got a written order signed by the owners of the hull and the agents or underwriters on the cargo, Carroll & Powell, of St. Louis, to pay this money over to my firm, and I sent that written order to the clerk on September 5, 1884. We received no reply from the clerk to the letter accompanying the order, and at the October term I went to Monroe. I found Judge Boarman had gone to Shreveport. The clerk informed me that he would return

the next day. I left an order to be put upon the minutes of the court and signed by Judge Boarman. The clerk stated to me that there would be no difficulty about it, and I came home.

After a lapse of several days, hearing nothing from the clerk, we telegraphed and on the 7th or 8th of November we received a reply from Wheaton that Judge Boarman informed him that he omitted to sign the order, but would do so, if satisfactory, on his return. When signed the draft would be forwarded for the amount deposited in court. We heard nothing further for some time. We wrote to Judge Boarman on the 10th of November stating the substance of what had happened and that there was no question except as to the costs, and all parties were desirous that it should be done and that the clerk ought not to wait for an order, that it seems to require one, etc. We received a letter from Judge Boarman, which I have not been able to find, quite awhile after that, stating the order was not signed because our power to withdraw the money was not duly authenticated. We prepared formal powers, one for the owner of the hull and one for the agent of the underwriters of the hull, had them duly acknowledged and sent to the clerk, still did not get the money.

Finally, at May term, 1885, I went to Monroe, got there Sunday evening, was anxious to get order signed, get money and get away the next day, so called on Judge Boarman Sunday evening, told him what I was there for. He thought everything was in shape and told me that I could get the money. Next day went to court and after docket was disposed of stated what I was there for and substance of conversation I had with Judge Boarman. He said: "Let me see your powers of attorney." I handed them up, he examined them and said, "The official capacity of the notaries public is not certified to." Mr. Boatner was sitting next to me and suggested to me that in Louisiana a notarial act always spoke for itself, and I replied that to the judge. After some hesitation he said it was all right and then said, "The power of attorney to represent libellants is not in court." I was rather indignant at that, and replied to the judge if that was the rule of practice in that court, it was the only court in Christendom that I had ever practiced in that required an attorney for plaintiff or proctor for libellant who was proctor of record, that required an attorney for the plaintiff or proctor for the libellant to have a power of attorney to draw money from the court, that I had been brought into the registry of the court by the fruits and efforts of his labor.

Again there was some hesitation about signing the order, and Judge Boarman then said, "I will grant you the order," and I handed him up the order, which I had prepared in the mean time, and he signed it. I went to the clerk, and he says, "Well, I will go and get your money," and we went around to a store in Monroe, kept by a firm by the name of Miles, probably Miles Brothers, or some such name as that. I know that Miles was the firm, and he went back in the counting-room of this store and I was paid all the money except about \$75. The clerk claimed that he had not then taxed all the costs, although we had written him as early as September, 1884, to tax the costs and deduct it from the fund. This was in May, 1885. On the 25th of May we received a draft from Mr. Wheaton for the balance of this fund, \$76.30. That ended the transaction, with as much difficulty in getting money out of a court as I have ever had. The suit was instituted by the firm of Miller & Hersh, and my firm was Miller, Smith & Hersh, which was formed the June following. Our impression from the delay in not receiving answers from our letters to the clerk and the subsequent correspondence with the judge and his conduct, was that Judge Boarman probably had some connection with the fund, and that we could not get it for that reason.

I never saw Judge Boarman before that Sunday evening in my life; I had never been in his court. I will say this, that I never have been more rudely treated in my life by any judge than I was by him. There was nothing in the record to show that I was a member of the firm whose name was signed to the libel. I was personally known by quite a number of the members of the bar there in the court room at the time; Mr. Boatner was there. There was nothing brought home to the knowledge of the judge that the name of the firm signed to the libel had been changed and that my name had been added to that firm, except my statement of the evening before in my conversation in which I introduced myself to Judge Boarman. I spoke to a number of lawyers when I entered the court room that morning and was sitting beside Mr. Charles Boatner at that time. Judge Boarman was then on the bench. (Pages 510-513.)

FIFTH CHARGE.

That he has appointed as clerk of his court a person known by him to be unscrupulous and dishonest, who had as deputy clerk in numerous cases demanded and obtained money and other valuables from litigants in his court upon his assurance that he could and would favorably influence the action of the judge, and had offered for a consideration to destroy important documentary evidence in his official custody, and had corruptly accepted a straw bond as a basis for the issue of process from said court—of all of which the judge was apprised and informed prior to the appointment of said clerk.

ANSWER.

Respondent denies that he appointed as clerk a man known to him to be unscrupulous or in any way dishonest; that he had any knowledge that any such damaging charges were ever made against the said clerk. He avers that he believes all such charges against Mr. Beattie are untrue and without foundation, and states that the only knowledge that he possesses of Mr. Beattie's failure to properly discharge his official duties is that he illegally issued an injunction in suit of J. E. Leonard vs. A. C. Gibson, marshal, under the advice and at the urgent request of Mr. Boatner, the case in which Mr. Boatner was the counsel applying for the writ. Respondent further avers that many persons, mostly members of the bar at Monroe, where Mr. Boatner resides, among them Mr. Boatner himself, orally recommended or favored the appointment of Mr. Beattie; that he is advised that Boatner offered to go on Mr. Beattie's bond as one of the sureties before Beattie had made his bond.

TESTIMONY.

E. T. LAMKIN testified as follows:

By Mr. BOATNER:

Q. It is stated in the answer of Judge Boarman that I prevailed upon the clerk, Mr. Beattie, to grant an injunction in the case of Leonard against the marshal which he had no right to grant. I will ask you if you know anything about that transaction?—A. Yes, sir; at that time I was not a member of the law firm of Boatner & Lamkin, but I was occupying the office of Boatner & Boatner with them. Mr. J. E. Leonard applied to Mr. C. J. Boatner to take out an injunction to enjoin the sale to be made perhaps the next day in East Carroll Parish. Mr. Boatner advised him it was against his judgment to take out the injunction and that it was impossible to obtain an injunction in time to arrest the sale on account of the absence of Judge Boarman and not knowing where he was. Mr. Leonard remarked that he could get Mr. Beattie, deputy clerk at that time, to issue the injunction, and Mr. Boatner told him that he was without authority to issue the injunction and that he would not ask him to do so because he knew it was wrong and illegal. Mr. Leonard said all he wanted was to stop the sale, he did not care whether the injunction was good or illegal, and he thought it was hard he could not get his attorneys to write up an application for him, and he offered to pay me to write it up. At that time one of the Messrs. Boatner said that they had no objection to prepare an application for him, but would not sign it as attorney, nor would they advise to ask the clerk to grant the order for the injunction. The application was prepared by one of them, but was not signed by them. Mr. Leonard presented it to Mr. Beattie in my presence in the court room. Mr. Beattie told him he would have to give bond, and Mr. Leonard asked me if I would go on his bond. I told him I had no property and was not good for that amount. He insisted that if I would go on his bond that he would get the injunction, and Mr. Beattie asked me to sign the bond also. I told him I would sign it, but I could not qualify, and I signed the bond and the injunction issued.

By Mr. LEONARD:

The petition and order is in the handwriting of Mr. C. J. Boatner. The question of the validity of this writ arose in the court. I came into the court room while Judge Ludeling was discussing the matter. He insisted that it was invalid. I happened to walk in the court room that morning while Judge Ludeling was on the floor and he said here is Mr. Lamkin now; I will have him sworn. I was

sworn, and I told him I signed that bond. I did not remain there. I won't say whether there was argument in behalf of the validity of the bond or not, because I do not know of my own knowledge. I know that Judge Boarman dissolved the writ, but I do not think I was present at that time. (Pages 476-479.)

SIXTH CHARGE.

In a suit pending in the United States district court for the eastern district of Texas, where Boarman sat in place of Judge Sabine, he refused term after term to sign certain orders or judgments in which Col. Turner, of Marshall, Tex., was interested as attorney, and that said Turner was approached by A. H. Leonard, who told him that if he was employed as attorney he could obtain the signature of the judge to the desired order and decree; and although there was otherwise no necessity for the employment of said Leonard, his known relations with the judge induced the acceptance of his proposition; whereupon the case was promptly decided and the orders and decrees signed.

ANSWER.

He denies the statements made therein, and avers that he presumes the case of *United States vs. Scott et al.* is the matter referred to. He avers that the case came up for hearing before him while he was holding the February, 1888, term of the United States court at Jefferson, Tex., in place of Judge Sabine; that the case having been called for hearing at Jefferson, the counsel consented to have it heard at Galveston in March, 1888; that said cause was heard on demurrer, filed by the United States at that term and overruled by the respondent; that at the suggestion of the counsel the respondent consented to hear the case on its merits at Shreveport in July in order that the case might go up on appeal to the Supreme Court in October of the same year; that said cause was submitted and decree signed at Shreveport accordingly. Respondent avers that he had no knowledge of the fact that Mr. Leonard had been employed in the case until he appeared in the trial of the case at Shreveport.

TESTIMONY.

JAMES TURNER testified as follows:

By Mr. BOATNER:

I reside at Marshall, Tex., and am a practicing lawyer; have been for thirty years; am engaged as counsel in the case of the United States against W. T. Scott and others in the United States circuit court for the Texas district. Suit has been pending something over two years on chancery side of docket. My clients approached me first on the subject of employing Mr. Leonard, stating that they had a proposition from him in reference to the case. I had no objection to other counsel being employed, but did not see any occasion for it. They told me that Mr. Leonard had agreed to go in for a certain sum not remembered and guaranteed recovery. The case had been pending in the circuit court at Jefferson, Tex. Judge Boarman held court there, and made an order transferring the case for hearing to Galveston. That was in February, and hearing was adjourned to Galveston in March. Between those dates this proposition of Mr. Leonard's was submitted. At the Galveston court the matter with Mr. Leonard had not been concluded, and he was not present. Some preliminary matters were settled, and Judge Boarman then set it for hearing to this place before himself. I advised my clients to close with Mr. Leonard, and when we met here Mr. Leonard met with me and the case was submitted to Judge Boarman and decided by him. Mr. Leonard guaranteed a hearing and the case would be decided in our favor.

I had no knowledge up to this time that Mr. Leonard had any connection with the case or any means by which he could have been advised and informed of the pendency of the suit and of its merits. I never knew Mr. Leonard to practice in Texas, but won't be positive about that, but have not heard of his doing so for the last six or eight years. Judge Boarman was holding court for Judge Sabine, who was sick at the time, and do not know on whose motion the case was sent to Galveston for hearing, but it was not upon my motion. After I heard it

was sent there I was willing to go. District attorney told me that it was sent at his instance. I think it was sent from Galveston to Shreveport in this way: Judge Boarman held the court at Paris. The first order was made for it to go to Paris, and we found we had mistaken the day for the Paris court, and that the time we had agreed on to try the case at Paris the court would be in session and adjourned, and it was then sent here. I do not remember whether it was on my motion or the motion of the judge. It was perfectly agreeable, however. It was between the Galveston court and the Shreveport court that Mr. Leonard was employed. I thought it was a peculiar proposition of Mr. Leonard's, and spoke to some lawyers in Shreveport about it, Capt. Bell and Mr. Shepherd.

Q. What was the motive that induced you to consent to the employment of Mr. Leonard?—A. Well, sir, I wanted to gain the case, and also in consequence of what the gentlemen in Shreveport told me.

Mr. Leonard had never examined the papers, so far as I know, up to the time he came to try the case. I had consultation with Leonard a half an hour before the case was called for trial. I had no consultation with Mr. Leonard before that time.

Q. But for the supposed connection of Mr. Leonard with the judge and his influence with the judge in obtaining a speedy hearing and decision of the case, would you have consented to his employment?—A. That was the ground upon which I advised my clients to employ him—for that reason.

By Mr. LEONARD:

I did not mean to impress upon the minds of the committee the idea that it was through me that Mr. Leonard's employment was made. I wanted to impress upon the minds of the committee that I advised it and consented to it and that my consent was necessary before the employment could be had. I most usually consent when requested by clients to engage other counsel to assist; always, in fact.

The case of the United States against Scott was filed in equity. Its purpose and object was to dissolve a compromise of a judgment that the Government had taken against the parties so that certain lands might be reached. The United States was party plaintiff and propounded interrogatories on the fact and a demurrer was made to the answers. There were exceptions to some of the specific interrogatories, one that was not answered fully and the other that was not responsive. Those were made to Judge Boarman at Galveston and he sustained both answers. When the case was brought up before Judge Boarman it was standing upon these exceptions for the answers. A case is generally heard where it is brought. I was not present when the case was sent to Galveston, but the inference is that the case was sent by consent of parties. When it came up at Galveston it came up on these exceptions, and the exceptions of the Government were overruled. The case then stood on the bill and answer.

Shreveport is in the western district of Louisiana. This case was in the eastern district of Texas. I know of no law that would authorize the case to be sent by the judge of Texas to Louisiana to be heard. It was agreeable to all parties that the case be sent to Shreveport. It was sent to Shreveport by Judge Boarman, but the parties agreed to it. It was sent to Paris and a day fixed, but when we got hold of the bill establishing the court at Paris we found that the term would be over at the time we had fixed, and then my recollection is that Judge Boarman suggested that he could hear it here and it was agreed to by all parties. The parties earnestly desired to have the matter disposed of. No matter what the decision might be, they wanted it decided so it could be taken to the Supreme Court, so as to get it in the next term of the Supreme Court. The only evidence offered by the Government when the case came up was the bill itself and the record itself. I did not expect any other evidence. Mr. Guthrie was in the case. I was not at Jefferson. The case had been pending longer than two years. I think it was brought in the fall of 1885. Judge Boarman had held two terms of the court at Shreveport. I had not made any effort in either of these terms to obtain a trial of the case. There had been an agreement that it should not be taken up. (Pages 415-419.)

PETER YOREE testified as follows:

By Mr. LEONARD:

Have resided in Shreveport since the war. I was interested in the suit of the United States against Scott and others. My wife is the daughter of Col. Scott, and one of the heirs. I knew you were employed to appear on behalf of the

heirs of Scott; I employed you myself. I first approached you on the subject; I did not receive any letter from you. You did not make any statements that you wanted me to employ you. The idea suggested itself to my own mind and I came to you.

By Mr. BOATNER:

I did not have any conference with Mr. Turner with regard to this. I employed Mr. Leonard before Mr. Turner had been consulted with, not before Mr. Turner had been engaged in the case; he had been in the case for twenty years, I think.

(Mr. Blanchard says: "That was an old case I happened to know about. They came up to Congress for a bill for the relief of Col. Scott, who was a surety, I believe, on the official bond of some marshal. Myself and the Texas Congressmen, in behalf of Col. Scott, interested ourselves in introducing a bill there and taking some action on it before one of the committees of the House.")

By Mr. BOATNER:

The controversy was about twenty years old; suit filed two years ago is virtually the same suit. Mr. Leonard was employed after Mr. Turner. I did not consult with Mr. Turner at all; he was always in the case and I employed Mr. Leonard myself. I never spoke to Mr. Turner about it. My brother-in-law, W. T. Scott, was a party to the suit. I do not think he ever spoke to Mr. Turner; he may have done it.

By Mr. LEONARD:

I know Judge Boarman. Have heard his reputation as judge discussed in this community to some extent. Would think his general reputation very good, though I have heard persons attack his reputation as judge here.

By Mr. BOATNER:

I have heard it stated that Mr. Leonard has the ear of the court. I can not say that Mr. Leonard is my regular counsel because he has never lived here since I had any law business to transact. The influence that induced me to employ him was I thought he was a good lawyer; I thought he would get my case through; that was the only inducement. I did not think he had special influence with the court; I did not employ him for that reason. Do not believe I have ever employed him before. (Pages 505, 506.)

SEVENTH CHARGE.

That in an application by one Neil Macdonald for the appointment of a receiver for the Shreveport and Houston Railway Company, and pending an application to same effect made by the Union Trust Company in behalf of the bondholders of said road, which last application was returnable before Judge Pardee, at Atlanta, Ga., the said judge having stipulated with the representative of Neil Macdonald for the employment of A. H. Leonard and M. C. Elstner as attorney for the receiver, and by reason thereof anticipated the proceedings pending before Judge Pardee by appointing as receiver the person suggested by Neil Macdonald's counsel, who thereupon employed as his counsel the said Leonard & Elstner, though prior thereto the services of another counsel had been provisionally engaged; and it is charged that the foregoing was a corrupt abuse of his judicial authority to promote the personal and professional interest of his personal friend and associate, Albert H. Leonard, and his relative, M. C. Elstner.

ANSWER.

Respondent avers that in the case of Neil Macdonald vs. The Shreveport and Houston Railroad Company an application for the appointment of a receiver for said company was made to respondent in New Orleans late in September or on October 1; that no order was then given there except an order directing the matter to be heard on the first Monday of the October term at Monroe, October 7. After citation notices, etc., had been given, the respondent, with counsel for all parties being present at Monroe, and with consent of counsel, in open court (for the company) defendant signed a decree, to which no objection was made by defendant company's counsel, appointing S. P. McCutchen receiver. Respondent avers that when the said application was made to him by McDonald's counsel that Judge Pardee, circuit judge, was absent from the circuit on his summer

vacation in Ohio; that respondent was advised by letter October 5, 1889, from Messrs. Farrar & Kruttsthnitt, lawyers, residing in New Orleans, that said lawyers, with the view of moving for the appointment of a receiver of the Shreveport and Houston Railway Company, had telegraphed on October 3 to Judge Pardee, at Wadsworth, Ohio, as follows: "Please wire earliest date when and where we can meet you in circuit to move for a receiver of Shreveport and Houston." To which said lawyers on Sunday received the following answer from Judge Pardee: "My first appointment is for Huntsville, October 16."

The said lawyers also stated in their letter of October 5, to me, that they, on receipt of Judge Pardee's telegram, forwarded to him on October 3, an order by mail requesting him to assign it for hearing at Huntsville and to return it, the order, to clerk at New Orleans. Respondent avers that he had given an order setting down McDonald's application for a receiver to be heard at Monroe October 7, before he received the said letter from said lawyers; that is a matter of fact, if said lawyers sent on October 3, their said motion or petition to Judge Pardee, for his action, the order given by respondent setting down the McDonald matter to be heard at Monroe had been given and signed before the order, papers, or petition of said lawyers were mailed to Judge Pardee, and before such papers were filed by said lawyers in this court respondent avers that considering the fact that Judge Pardee was absent and would not be in the circuit for two weeks, that when he gave McDonald's counsel the order setting down his application for a receiver to be heard at Monroe, October 7, he had not been advised that any proceedings in a similar case, on the part of other litigants, had been or would be acted on by Judge Pardee at any place, and he had not been advised that anyone had forwarded a petition or bill to him for an order setting down any motion or application to be heard at Huntsville or anywhere else relating to the case mentioned in the letter of said lawyers. Considering these facts, and further, that on the hearing at Monroe, all the parties in interest were represented by counsel in the McDonald suit, and the further fact that the defendant's company's counsel, though present and appearing for said company, made no objection to respondent appointing a receiver, respondent avers that he believes now as he believed then, that he had full judicial authority to appoint McCutcheon receiver in said suit. Respondent respectfully avers that a judicial examination of his action in this matter will abundantly show authority in him at that time and place to sign a valid lawful decree, appointing said McCutcheon receiver; that his judicial power in the matter was not affected or impaired by anything suggested or stated in said letter of said lawyers.

Respondent specially denies that he appointed said McCutcheon at the suggestion of McDonald's counsel. He avers that as a matter of facts said counsel wanted Mr. Howe appointed receiver, the same man whom Judge Pardee afterwards appointed receiver. He denies that any understanding or stipulation was had with McCutcheon or anybody else that Mr. Leonard should be appointed counsel for receiver. He avers that he did not see McCutcheon anywhere, or at any time, or have any correspondence with him before he, McCutcheon, came to him after he had been appointed at Shreveport. That respondent, in advising with Mr. McCutcheon after his appointment, suggested the selection of Mr. Leonard, and he readily agreed to his appointment. McCutcheon did not at any time name or mention any counsel whom he wanted or preferred. He avers that he suggested the appointment of Leonard because he is an honorable, competent lawyer with large experience, and because respondent had on a former occasion, when the same company was in court, appointed Mr. Leonard counsel for the receiver, and his services were in every way satisfactory to all parties. Respondent avers that when Judge Pardee appointed Mr. Howe receiver, in the suit instituted by Mr. Farrar, McCutcheon was treated, so far as respondent knows, as if he had been legally appointed by respondent in the McDonald suit; that his acts were ratified, and that he and the counsel representing him were allowed liberal sums by Judge Pardee with the consent, I presume, of Mr. Farrar for their services.

Respondent avers that during his service on the State and Federal bench that he has no knowledge or recollection of ever having appointed Mr. Elstner to any office or place in his, respondent's, gift. That he appointed Mr. Elstner in the McDonald case associate counsel with Mr. Leonard because McDonald's counsel suggested and asked that Mr. Elstner be appointed; that otherwise he had no intention of appointing Elstner or any one else with Mr. Leonard. As to the final charge, which seems to be made apparently on Boatner's own assurance, respondent avers that it is false, and that the records of the court will show how unfounded it is. He avers that the statement of the charge carries with it its

error, because there are very few, if any—save admiralty and criminal cases—suits which litigants can not bring or institute in the State courts. Respondent further avers that the statement is false, and Boatner did not believe in the truth of his own allegations, because, in July last, before these charges had been filed or presented to your committee, Boatner himself, so respondent is advised by his law partner, Mr. Lumkin, formulated and partly wrote a bill in equity, praying for injunction and a receiver in a suit involving nearly \$100,000, styled *Annie L. Saunders vs. T. J. Maugham, et al.* That Boatner having formulated or written said bill, caused his law partner, Mr. Lumkin, to file and present the same to me for orders in July last; that the said suit was heard by respondent and the bill dismissed; that afterwards, and before respondent knew of these charges having been filed, the same bill with a change in the pleadings was again filed in this court by Boatner and his law partners, and said suit is now pending in this court. In addition to this, respondent avers that said case was at, before, or about the time Boatner caused Lumkin to file said suit, a pending suit in the State court at Monroe, that having withdrawn, or in some way taken the said suit from the jurisdiction of the State court, he caused the same to be filed in respondent's court. Respondent avers that he will show said charge to be unfounded and false by the action and letters of the entire bar at Alexandria; by the action and letters of all or nearly all of the lawyers at Opelousas, and by numerous letters from lawyers at Monroe and elsewhere in this district, which said letters he will file with this answer.

TESTIMONY.

S. B. McCUTCHEON testified as follows:

By Mr. BOATNER:

I reside here and am a banker; am the person appointed by Judge Boarman as the receiver of the narrow-gauge Houston road. The appointment of Messrs. Leonard & Elstner as attorneys for the receivership was suggested to me, not by Judge Boarman, but, I believe, by Mr. Wise. It may have been Mr. Pierce, who was the attorney who represented the creditor, who obtained the receivership. I would have appointed any attorney named by him at his request and the request of Mr. McDonald, who was a party in interest. I could not state positively who made the suggestion to me, but it was understood that Leonard and Elstner were to be the attorneys representing the road during my receivership. But for that suggestion I would have retained Messrs. Wise & Herndon. I believe the question was sprung in this way: They were the attorneys representing the road, but this was a different interest and probably might conflict. (Page 473.)

S. B. McCUTCHEON recalled and testified as follows:

By Mr. BOATNER:

I am the same person who was appointed receiver by Judge Boarman on the narrow-gauge road. Judge Boarman did not give me any advice after the vacation of my appointment by Judge Pardee with respect to whether I should turn loose or not. He refused to do so. He did not tell me he would sustain me in it. He told me this: He did not see why I should not be sustained.

Q. He told you that if you did hold on he did not see why you should not be sustained?—A. No, sir. This was prior to the vacation. It was about the time he gave the order relieving me. I went to him and asked him how the matter stood. I wanted to do what was exactly right in the premises; I wanted to protect all the interests of the road and the parties in interest. This statement of Beattie's account is all that is shown on our books.

Mr. BOATNER. I will ask to put that in the record. (Pages 486-487).

W. H. WISE testified as follows:

By Mr. BOATNER:

Am a lawyer at Shreveport; have been for twenty-one years; my firm represents what is known as the narrow-gauge road, the Houston road. I was the representative of the road at the time the application was made by Neal McDonald to put it into the hands of a receiver.

Q. Were you of counsel in the application for that appointment?—A. No, sir; I was not.

Q. Was there any understanding between your firm and Neal McDonald's coun-

sel as to who would represent the road as attorney for the receiver when appointed?—A. I will state that Mr. W. S. Pierce came to my office with a letter of introduction from Dillon & Swayne, of New York, and represented that he was not a partner but one of their office lawyers in New York, and that he was about to file a bill in equity and ask for the appointment of a receiver in this road, and said that he knew that my firm had been the attorneys for the road for a number of years and had had correspondence also with his client, Mr. McDonald, and that he did not desire to have any change made in the appointment of attorney for the road after it should go into the hands of a receiver, and wanted us to continue, as far as we were concerned, to represent the receiver after it should go into court. Mr. Pierce first thought of having a gentleman in Houston appointed. I suggested that Judge Boarman would prefer, and he thought it proper that a Shreveport man should be appointed. I thought Mr. McCutcheon would be a very suitable man. I introduced him to Mr. Pierce. I had no understanding with Mr. McCutcheon as to who would represent the receiver in case he should be appointed. He consented to act and was subsequently appointed receiver.

I went to Monroe with Mr. Pierce the day the application for receiver came up and made an appearance with the Shreveport and Houston Company, the defendant. I did not oppose the appointment. Mr. A. H. Leonard represented the receiver after he was appointed. It was my understanding that I would be attorney for the receiver until Mr. Pierce returned from New Orleans, where he reported to have had an interview with Judge Boarman. Judge Boarman fixed a day at Monroe when he would meet the court there and have the appointment made. After his report of the interview with Judge Boarman I did not then expect to be attorney. I think the Union Trust Company had filed a bill in equity asking the appointment of a receiver just one day prior to the filing of the bill from Mr. McCutcheon. They applied to Judge Pardee; he was not in the State and took no action. Judge Boarman took action by the appointment of a receiver. Judge Pardee in a little while later made an appointment, consolidated the two bills, revoked the appointment made by Judge Boarman, and appointed M. G. Howe, of Houston, receiver, who is now the receiver. He asked services of my firm, and we made application to Judge Pardee and were confirmed by him, and are now attorneys for the receiver.

I have been attorney for the road since it was in operation; I think since 1885, after the receivership of Samuel Levi was ended. I can not state what is the general impression with respect to Mr. Leonard's influence in Judge Boarman's court. I have heard a great many persons, members of the bar and others, speak of the matter, rather suggesting, I think, that there was perhaps undue influence exerted by Mr. Leonard over Mr. Boarman. They have been long time friends and always social, very intimate; were boys together. They have been almost constant companions and associates ever since I have known them, and are nearly the same age, and, as boys would say, have been running together. The general impression in this community of the bar and people, is that any litigant commends himself to the court by the employment of Mr. Leonard. Mr. Pierce said the interview between him and Judge Boarman occurred in New Orleans, that Judge Boarman asked him if he had ever met Mr. Leonard; he wanted him to meet him and introduce him to him, and stated he would not appoint Wise & Herndon, because we were the attorneys for the road and it would be inconsistent with our employment as attorneys for the railroad and also for the receiver after he was appointed. I was not appointed, and Mr. Pierce stated to me the reason was because of that interview.

By Mr. LEONARD:

I have lived here all my life, and have known Judge Boarman and you nearly all my life. You are about the same age. It is a well-known fact that you were schoolmates and went off together in the same company. Have known you were like brothers ever since I have known you; exceedingly intimate. Mr. McCutcheon resides at Shreveport and is living. (Pages 463-6.)

W. H. WISE recalled, and testified as follows:

By Mr. BOATNER:

I never suggested the employment of Messrs Leonard & Elstner as the attorneys for the receiver; am positive about this. (Page 473.)

EDWARD H. FARRAR testified as follows:

By Col. OATES :

I reside at 54 East St. Charles avenue, New Orleans; my business, attorney at law. I know Judge Boarman. My firm, Farrar, Jonas & Kruttschnitt, were counsel of the Union Trust Company of New York. That company was the trustee of the first and only series of mortgage bonds upon the Houston and Shreveport Railroad. The road is 40 miles long and extends from Shreveport into Louisiana, where it connects with the Houston, Eastern and West Texas. On the 2d of October, 1889, we filed a bill in the circuit court for the western district for the Union Trust Company at the request of the mortgage bondholders for the appointment of a receiver. Process was served on that date and the notification was served with the application for the appointment of a receiver would be made before the Hon. John A. Pardee, at Huntsville, Ala., on the 16th of October. On the following day, after this bill was filed and notice served, Neil McDonald, who claimed to be the holder of certain receiver's certificates, also filed a bill in the same court asking for a receiver the same property, and set down the hearing before Judge Boarman. Notification of this application came to us through the public press, and we thereupon, on the 5th day of October, addressed a letter to Judge Boarman, which, I am informed, was handed by the judge to the counsel in the case from the bench on the morning of the 7th of October. (See letter in full in record, page 514.)

Mr. Pierce, of Dillon & Swayne, of New York, was counsel with instructions to go on with the case. He proceeded with the case and appointed McCutcheon of Shreveport as receiver. Mr. McCutcheon immediately named Mr. Albert Leonard and Mr. M. S. Elstner as counsel. There is in this circuit an established rule between the judges of the circuit and district courts that wherever the subject-matter of any litigation or any case is taken hold of by one judge that the other judge should not enter any orders in the matter or take any jurisdiction or proceedings in the case whatever. That rule is a rule of courtesy and comity that is absolutely necessary to the proper performance of judicial functions in the court composed of three judges, all competent to enter orders in circuit court cases. We were profoundly surprised at Judge Boarman's conduct. Here was a bill of equity in the court, the suit of the first-mortgage bondholders. Process was served and application was made to the circuit judge for a fixed day, which was granted, and on the subsequently filed bill he ignored these facts and appointed a receiver. We immediately took a rule to rescind the appointment of a receiver in that case, and a rule upon Neil McDonald to show cause why this bill of his, subsequently filed after the property was in *gremio legis* and the jurisdiction of the court attached, should not stand.

That was the only proper proceeding to take. The property was in the hands of the court, the court had jurisdiction of it and it could not have double jurisdiction of it. That rule was made absolute. It was tried before the circuit judge, the appointment of the receiver was rescinded, and Mr. M. M. G. Howe, who was the receiver of the Texas branch and practically the manager of the Louisiana branch and had been for years, was appointed receiver by Judge Pardee at the request of the bondholders and by the consent of the defendant. We had great difficulty in getting the property away from this receiver. He was advised, so he said, by his counsel, Messrs. Leonard and Elstner, and also by the judge, to resist the order of Judge Pardee consolidating the cases and appointing Howe receiver and discharging him. We consulted the circuit judge here and we had to file a petition for a writ of assistance and also to take proceedings against Mr. McCutcheon and Mr. Elstner and Mr. Leonard for contempt before they would surrender and deliver the property. I went to Shreveport to adjust the claims of this receiver who had been in possession of the property from about the 7th of October until this order was entered, some time in November or December.

The receiver's certificates of which I spoke were issued by Judge Boarman's orders in the case of John R. Jones vs. Shreveport and Houston Railroad Company. The record shows that Mr. Leonard filed two bills about the 25th of July, 1885, one of the notes issued by Bramonde, the other one on a claim for materials furnished the road. A receiver was appointed for the property by Judge Boarman without notice to the defendant, without a hearing, on the *ex parte* application of Mr. Leonard. The order to rescind the appointment of the receiver was fixed before Judge Pardee, at New Orleans, by consent of Mr. Pierce, for the 26th day of November. When the morning of the trial came Judge Pardee exhibited to me a telegram from Judge Boarman. I will state my memory of the purport of it. It was that Wise, the attorney for the defendant company, re-

requested a postponement until Saturday, and that he (the judge) would be down on Saturday. (The point in the case, gentleman, is the authority or the truth of the statement as to whether or not Mr. Wise desired any continuance and whether or not he authorized the judge to send any telegram to say that he did so.)

By Mr. MARKS:

I did not propose, if possible, to let Judge Boarman have anything to do with the appointment of a receiver in any case in which my clients had any interest, because I was convinced that the receiver that Judge Boarman appointed would immediately proceed to employ Mr. Leonard or Mr. Elstner; if possible, both; so I took the chances of finding Judge Pardee, who was absent, when I could have obtained my order directly from Judge Boarman, who was present. I know by the statement of Mr. Pierce and by the statement of Mr. Wise, made to me personally, that that letter which I have read to this committee was handed down from the bench by the judge to the counsel when this application came up for hearing before him. The order was signed after this hearing, on the 7th of October, and after this letter was received and read and handed down. The order appointing the receiver in that case was made at the hearing. The hearing was held on the 7th of October. At that hearing Judge Boarman was in possession of this letter informing him of the previous application to Judge Pardee and stating what that letter states. The bill of the Union Trust Company against the Shreveport and Houston Company had never been presented to Judge Boarman, and no motion had been made in it before him, and the jurisdiction of the court over the property had already attached in that bill.

The subsequently filed bill of Neil McDonald against the company was the one which was brought up by counsel in that case before Judge Boarman on the motion to appoint a receiver. No action had been taken by the judge, no action had been taken by the court, and the counsel were before the court asking action in that case, and against the action in that case our letter was written, giving as the reason why action should not be taken in that case that a previous bill had been filed in that matter and that a previous bill was before the circuit judge. The subsequent bill was filed after the Union Trust Company's bill was filed. Knowledge was brought home to Judge Boarman of the first bill in this case at the time the application was made to him in the other case by our letter.

By the CHAIRMAN:

Q. I understand Mr. Farrar to state that at the time of the application for the appointment of a receiver in the McDonald case he had before him this letter which has been read?—A. Yes, sir; on the 7th of October.

By Mr. MARKS:

An application is one thing, and that is a mere motion of notification to divers parties that on a particular day, at a particular place, before the circuit judge or district judge, a motion will be made to appoint a receiver in accordance with the terms of the bill. That is the simple and *ex parte* conduct of the complainant, with which the act of the judge has nothing to do. That was the character of the application that was made before Judge Pardee and the day had been fixed and the notice had been served prior to the time when this other bill was filed. (Page 513-518.)

Testimony bearing upon the charge that "The want of confidence and universal distrust in the integrity and honesty of the judge has prevented for some time past the institution of any suits in this court which could be brought elsewhere."

J. C. WEAKS testified as follows:

By Mr. BOATNER:

Witness resides in Monroe, La.; has been marshal of the district; was appointed by Gen. Garfield in 1881 and served four years.

Q. Mr. Weeks will you please state whether or not during your incumbency you loaned to or the judge of the district applied to you for any financial accommodation?

(I will state to the committee that this witness is under the impression that the answer to this question would subject him to a criminal prosecution.)

A. An affirmative would.

The CHAIRMAN. The witness will be required to answer.

A. Yes; I have loaned Judge Boarman money.

Q. Could you state how many times, Mr. Weaks?—A. No, sir; I can not.

Q. Say three or four, four or five times?—A. Three or four times.

Witness could not state the aggregate of the loans; does not think he ever got more than \$300; could not really say that he ever got \$300, probably \$250; could approximate near the amount each time; he did not get as much at \$250 each time, probably less; could not remember how many times he ever got money; within bounds will say \$500 altogether; is satisfied that it is not less than that; it might have been more. Could not state that anyone else knew at the time of the loan of this money to the judge.

Q. Well, why did you loan him this money?—A. Well, sir, that would be rather a hard question to answer. I gave it to him because he desired it and because I believed he would return it, which he did.

By the CHAIRMAN:

Q. Captain Weaks, did the judge put you under any duress; exercise any improper influence upon you?—A. He did not.

Q. In order to induce you to lend him this money?—A. He did not. There was no sort of inducement held out to me outside of what would be usual in a transaction of that kind. I did not feel obliged because of any relations between myself and the judge to loan this money; no peculiar circumstances attended the payment of this loan; did not know by what means the judge made them. The position of the judge as judge enabled him to greatly increase or decrease the revenues of my office according as he might hold his courts.

Q. Were you not under the impression and belief that your interests required and demanded that you should extend these accommodations to the judge whenever he asked it?—A. I might; they required me to be on good terms with the judge.

Q. Were you in a financial condition to be loaning out such sums of money to parties as a mere accommodation?—A. No, sir.

Q. Is it not a fact that you made these loans at some personal inconvenience?—A. No; no personal inconvenience to me, because it was not mine.

The CHAIRMAN. What was not yours?—A. The money.

Q. Whose money was it?—A. The Government's.

Q. The Government's?—A. Yes, sir.

Q. Money in your hands as United States marshal?—A. Yes, sir.

Q. Did the judge know that?—A. I do not know, sir; only what I presume.

Mr. BOATNER. Did you not know, Capt. Weaks, at the time that that was illegal?

A. Yes, sir.

Q. Would you have done an illegal act to accommodate the judge unless you had felt that your interest required that you should do it?—A. It was to my interest that I should do so; I had my interests in his hands.

Q. Wasn't it by reason of the fact that your interest was in his hands that you violated the law for his accommodation?—A. Yes, sir.

Q. That was the cause?—A. That was one cause; yes, sir.

Q. If I or any other private individual had come and asked you to lend us money would you have done it?—A. No, sir.

Q. Would you have loaned that Government money to anybody except the judge?—A. I never did, I believe, as far as I can remember, let anyone else have it.

Q. You say you don't know whether the judge knew this was Government money or not?—A. I can not say he knew it.

Q. You can not say he knew it?—A. No, sir; I told him when I settled with the Government; I told him I would have to settle with the Government; I did that every half year.

Q. When you would call on him for settlement for the money, you would inform him you had to settle with the Government?—A. Yes, sir.

Q. Then he would pay the money?—A. Yes, sir.

Q. Now, Mr. Weaks, did you observe any coincidence in the payment by you of money into the registry of the court and the subsequent repayment to you, by the date, of what he owed you, and very shortly thereafter were reimbursed by the judge?—A. Yes, sir; I only recollect one instance of that kind.

Q. What is that; when was that, sir, and how much was it?—A. I don't remember the amount, sir; I don't remember the date of it; I can not remember; and I distributed what money I paid in; it was probably some \$1,000, or \$1,200.

Q. You paid that much money into the registry of the court?—A. Yes, sir;

about the time I was settling with the Government, probably June or July; July I guess it was.

Q. How long after this payment before the judge paid you back?—A. Within a day or two.

By the CHAIRMAN:

Q. Do you mean to imply that the judge used Government funds to repay you?—A. I do not know, sir. He asked me if I remembered any coincidence,

Q. Do you mean to imply by your statement here that he used money paid into the registry of the court to pay you the loan?—A. No, sir; I did not imply anything at all; I simply stated he had paid me after it was paid into the registry of the court. I do not know where he got it.

Q. Who has charge of the money that is paid into the registry of the court?—A. The clerk.

Q. Who was the clerk at that time?—A. J. W. Wheaton.

Q. Where does he live?—A. He is dead, sir, I understand.

By Mr. BOATNER:

I do not remember whether this particular money was repaid to me by money or by check; paid after I had made payments into the registry of the court. I was of the opinion it was paid to me in money, but I am not sure. Mr. Wheaton, the clerk, told me Utz & Smith were his custodians of the money that belonged to the registry of the court. I think it was about \$250 that was paid me the time mentioned; I think it was in 1884.

By Mr. LEONARD:

At the time I was marshal I did not have any property or means of any kind; I mean I had money and other effects, but no real estate. The average compensation per year as marshal would approximate, say, from \$1,500 to \$1,800. I do not mean that as net. I would not place the amount I received above expenses at over \$1,500 per year. I consider myself a careful business man; it is hard for a man to think otherwise of himself. At the time I made these loans to Judge Boarman I had an account against the Government.

Q. Did you ever use any money of the Government's in excess of the amount which would be due to you on the allowance of your account?—A. Yes; in excess of what was due to me on account.

Q. Did you ever use any money which could not be made good by the amount which the Government owed you?—A. I do not remember, sir.

Q. You don't remember?—A. I had money to my account which I considered sufficient to make good my account; outside of that I can not say I had.

Q. You receive an average of \$1,500 a year from the Government?—A. Yes, sir; about that.

Q. Have you ever used in any way any money of the Government's in excess of the amount of money of which would be due you by the Government on the allowance of your account?—A. I think not, sir.

By Mr. BOATNER:

Q. Mr. Weeks, did you ever use any money of the Government's for any other purpose than to loan to the judge?—A. I can not recollect, sir.

By Mr. LEONARD:

Q. Mr. Weeks, is it not a fact that these loans were made by you to Judge Boarman when he was absent from Shreveport: when he was absent at Monroe, Opelousas, and Alexandria?—A. Yes; courts were held at Opelousas and Monroe.

Q. Is it not a fact that some of the loans were made when he was absent from home?—A. I do not think they were all made here; some, I think, were made in his absence. (Pages 420-424.)

A. C. GIBSON testified as follows:

By Mr. BOATNER:

I am a planter and live close to Tallulah, Madison Parish; was marshal of this district corresponding with the term of President Cleveland; was his appointee.

Q. Will you state whether or not during the term of your incumbency money was borrowed from you by the district judge?—A. Yes, sir.

Q. State how much was borrowed.—A. I think at different times \$500 and \$600.

Q. Can you state whether or not that money was your own funds or the Government's funds?—A. Well, my testimony would be about what Mr. Weak's said; perhaps I might have used Government funds; I think I did, but there was money due me by the Government which exceeded it in amount. I know at one time—I am confident I at no time loaned the judge any money beyond what I considered the Government owed me. It was a little out of form, but you know how these things are.

Q. Can you state, major, why you loaned this money to the judge?—A. Oh, you know it was just a family affair. Here was the judge and the clerk and the marshal, and like a man with a family he does things, you know—he gets things for his wife and family so he won't have a row. The judge, you know, was very kind to me, and I felt kindly towards him, and I wanted to be in harmonious relations with him. He had a great deal of power, but he always treated me with great consideration. I felt very kindly towards him. We differed in politics, but our associations were very pleasant during the term.

Q. Did you borrow any money from the judge?—A. No, sir; the judge was like myself, generally borrowing, I believe.

Q. Major, will you state whether or not the official position of the judge had anything to do with your extending these accommodations?—A. Of course it did; certainly. It has to this extent, if you will allow me to explain: It was from the fact that I feared that perhaps it might ruffle the intercourse between us, and that was pleasant and agreeable. It was agreeable to me to be able to accommodate him, and it was agreeable to me to do so, and the feeling between us would not have been so good if I had refused, I imagine, although there was nothing of that kind said.

Q. The judge had the authority to approve your claim and fees. Did that enter into the consideration at all?—A. Well, I suppose that had some effect; yes, sir.

Q. How long, major, before this money was repaid to you; was it repaid to you during your term of office?—A. Oh, yes; it was paid whenever demand was made.

By Mr. LEONARD:

Q. Is it not a fact that these loans were made in small amounts when Judge Boarman was absent from Shreveport, in Opelousas, Alexandria, and Monroe?—A. Well, I was in Monroe. The largest amount was \$300, I think, and then \$150 and \$100, I think it was, as near as I can recollect.

Q. I say, was it not made while he was absent from Shreveport?—A. I think it was, perhaps, one or two places; I think he wrote to me at Monroe, and that was \$300.

By Mr. BOATNER:

I loaned him \$300 at one time and \$350 at another time; that was two years ago, I think.

Q. Was there any time during your term that you could loan out as much as \$300 without any inconvenience to yourself unless you loaned the Government money?—A. No; great personal inconvenience? no.

Q. What did the salary and emoluments of your office amount to at that time?—A. One year it was \$1,100, salary, fees, and everything. I think the average was about \$1,400.

Q. Wasn't this loan of \$300 a very considerable personal inconvenience to you?—A. It was not so much personal inconvenience. I think, if I recollect properly, that I received Judge Boarman's letter and asked you whether I ought to let him have it, and you advised me to do it.

Q. Upon what grounds, major, did I advise you to do it?—A. Well, upon the grounds that my relations would be unpleasant if I did not let him have it.

Q. Was that your own money or Government money?—A. I suppose it was mixed. I had that much; I think the Government was indebted to me that much, but I suppose really that \$300 was Government money.

Q. Government money that was due you?—A. Yes.

By the CHAIRMAN:

Q. Unaudited claims?—A. Yes, sir.

By Mr. McCORMICK:

Q. That is to say, on settlement had between you and the Government there would have been that much or more coming to you?—A. Yes, sir.

By Mr. OATES:

Q. Were you authorized by the accounting officers of the Treasury to retain it?—A. No, sir; but you know when we made our requisitions there were always some funds that would be very short and then there would be a large amount in other funds.

By Mr. BOATNER:

Q. Maj. Gibson, at the time you say you asked my advice about whether you should lend him this money, did you know, state, or refer to the fact that your compensation or salary depended upon the good will of the judge toward you?—A. Yes, sir.

Q. That your compensation largely depended upon his good will?—A. Well, it could be enhanced or decreased according to his disposition. I showed you and told you that my salary was very small, and you advised me to do so.

Q. On what ground; as stated, that your compensation depended upon the attitude of the court toward you?—A. Yes, sir.

By Mr. MCCORMICK:

Q. You refer to the relations between yourself and the court and that your success depends upon the good will of the court; do you refer to the judicial passing upon your accounts as marshal?—A. No, sir, not so much; but sometimes the court would occasionally extend a little, or these cases were prolonged, like these lawyers do by arguing here. Whenever they argue it takes up a good deal of time, etc., and increases the per diem and things like that.

Q. You mean, then, you could have been favored by the court in prolonging sessions for your benefit?—A. Not that exactly, but in holding ten days' court you might cut it down to six in holding court at night.

Q. That is the meaning of your statement, that the court had power to benefit you or otherwise?—A. Yes, sir; I think so.

Q. And you had no reference to the passing upon your accounts by the court as required by the act of Congress?—A. Yes, in this way; for instance, in the mileage of a marshal. Mr. Boatner was present one time I refused to serve a paper unless the cash was in hand and I required \$50; and the plaintiff applied to the court and said the services were only worth \$7.50. Mr. Boatner lived where this place was, and he said he had made the trips frequently, and it could not be done under \$45, and the judge, you know, was very kind in that way.

By the CHAIRMAN:

Q. Whatever you had in your own mind that induced you to loan this money, I want to ask you whether the judge on his part was guilty of any conduct that was corrupt or dishonest. Did he put you under duress in any way? Did he in any way conduct himself so as to control your will in this matter, to induce you to loan him that you did not desire to loan?—A. Not at all. I think there were only three applications. One was by that note, and one was through my deputy marshal. The deputy marshal spoke to me.

Q. Did he know what money you were loaning?—A. No, sir; I do not think he did.

Q. Was there anything in the transaction to indicate that you were using Government funds rather than your own?—A. I can not say; I do not know that he knew that. I do not know what his knowledge was.

Q. If I understand you, the relations between the judge and yourself were pleasant?—A. Yes, sir; very pleasant, without being intimate.

Q. You were perfectly willing to loan him the money, and perhaps you were interested in some degree in desiring to maintain the pleasant relations that existed?—A. Yes, sir.

Q. And perhaps a fear that they might be disturbed; there might be a coolness if you refused to loan him the money?—A. Yes, sir.

Q. But beyond that there was nothing operating upon your mind to induce you to make the loan?—A. No, sir.

By Mr. MCCORMICK:

Q. Was there any word, suggestion, or action upon the part of the judge, by his manner or otherwise, that these loans would inure to your advantage?—A. Not a syllable or whisper.

By Mr. LEONARD:

I never presented to Judge Boarman any false or fraudulent accounts; I have never had in my mind at any time any expectation that I could induce the judge to approve any false or fraudulent account.

By Mr. BOATNER:

Q. Major, I will ask you whether or not it was a well-known fact, you might say notorious, that during the time of your incumbency as marshal you had no other revenue or means of income except your salary as marshal and the emoluments of your office?—A. If that was the well-known fact, it was not true. I did have some other funds or I would have starved.

Q. I will ask you now whether it was not a common thing during the term of your office for the court to be held upon five or six days and sometimes as long as a week without the attendance of the judge, court being adjourned from day to day for a week after the judge had left the court?—A. I do not think it was long; perhaps two or three days in making up the reports.

Q. After the completion of the business of the court, after the completion of the cases, was it not a frequent occurrence that court was continued for several days after the departure of the judge?—A. Two or three days, perhaps; not more than that. (Pages 424–427.)

JOHN R. JONES testified as follows:

By Mr. BOATNER:

I reside in Shreveport; am a lumberman; was defended in the suit of United States against John R. Jones for cutting timber on public lands, tried several years ago. I have frequently indorsed paper for Judge Boarman; am not aware having indorsed any paper for Judge Boarman shortly anterior to that trial; the last paper I indorsed must have been about six months ago; was not on his paper at the time of the trial. I indorsed the last paper, I think it was renewal, about three months ago, for \$500. I have in my safe a life policy on Judge Boarman; it has been there since 1887; I have been on Judge Boarman's paper from that time until now, from \$500 to \$1,000. I state positively that I was not on his paper at the time of the trial. I do not think I was on it at that time. Two or three weeks after that I went on paper for him for \$500. Up to that time they were what I consider nominal sums, \$200, \$300, or \$400. Since that time I have been on his paper as high as \$1,000. I recollect very well the time of the trial; it was in term of court of 1888, in the fall, I think. I am able to state that I was not on his paper at that time for this reason, that I met Judge Boarman on the street one day within two weeks after the trial and he told me he would like to get my indorsement on his paper. I asked him if there was any danger of my having to pay it. He said no, certainly not; not as long as he lived. I have held that policy ever since, and I told him all right, I would indorse it.

Q. Have you held that policy ever since?—A. Yes, sir; I had it long before that. I wish to state this emphatically, that I would at any time indorse for Judge Boarman, on account of the friendship I held for Dr. Clark, in any amount that would not hurt me personally. Judge Boarman secured me against loss by depositing the policy.

By Mr. OATES:

Q. How is Dr. Clark connected with the judge?—A. Dr. Clark was a brother-in-law of Judge Boarman, and one of the best friends I ever had in Shreveport. When the gentleman became unable to make his living Judge Boarman took care of him and his family.

By Mr. LEONARD:

I am not able to state the total amount altogether of my indorsements for Mr. Boarman; it would not aggregate as much as \$5,000. It sometimes reached \$1,000 at a time. I have been residing in Shreveport since 1865; I met the Federal army here; have been engaged in business ever since then. I clerked here for four years, and then went into the sawmill business. My business had been quite extensive for a number of years. I know to some extent in what estimation Judge Boarman is held by the community at large; have heard it discussed.

Q. What is the general reputation of Judge Boarman as a judge by this community?—A. Well, the only way I could get at that is that my own attorney, who has generally done my business, hated to go before him to some extent; that is, he said to me he did not know much about the United States law and he did not want to go before that court. I will explain that. When I had a case and I wanted to go to the United States court in 1882, against the New Orleans and Pacific—I built that road and I considered I was abused in it—my attorney recommended me to compromise, by which I lost \$27,000 that I had no more business to lose than I had to throw it into the river, but I took my attorney's

advice and compromised it simply because I did not go to the United States court. Amongst the community at large I think Judge Boarman's reputation is pretty good, but there are some attorneys here who object to him.

By Mr. BOATNER:

My attorneys, Alexander & Blanchard, distinctly advised me to compromise with the New Orleans and Pacific Railroad; that I had no case. On that advice I compromised the suit and the following May some parties went into the United States court in New Orleans and gained all they claimed. Those contractors, during the process of construction, had been in default and I had never.

Q. I understand you to say that one of your attorneys did not like to appear in this court: did you say that?—A. Yes; I did say that. Mr. Alexander has once or twice spoken in a way that he did not want to appear in this court,

Q. Please state what financial standing Judge Boarman has here, whether he has any property, or whether he is a man considered good for the debts he contracts.—A. I do not think he has any property; I do not know of any. I do not know exactly how to answer that question excepting that I have occasionally sold the family a little lumber, and I have always been paid for it. The bill was always given to him whenever any lumber went to his house. Occasionally little lots went to Dr. Clark.

By Mr. LEONARD:

I never knew of Judge Boarman being sued in the court.

By Mr. OATES:

Q. The question I ask is about reputation.—A. I have never heard that he had a reputation of being bad pay. He has a reputation of borrowing a little money occasionally, but I have the first time to hear of him refusing to pay that, or of any judgment being against him. (Pages 479-482.)

J. C. BOATNER testified as follows:

By Mr. LEONARD:

I think the suit of Sanders against Sanders was instituted in the month of July. I think the charges were handed to the committee in April or May. I do not know how many cases there are on the docket at Monroe. I know of no new cases filed unless you and Wade Young have filed some. I do not know of anybody else who brings suits there but you and Wade Young. I doubt if you ever brought a suit in that court. You were engaged with me in the Stein and Gerson cases, about a hundred of them tried as one. I think there must have been fifty of them; anyhow there were a great many. Then you were employed with me in the Foster case and the Cohn cases. Mr. Flower told me he had sought to employ you in the case of Nalle against Young, but that you had examined the papers and told him that employment was unnecessary. I do not want the impression made that I had any objection to associate with Leonard other than what I have recited. I dislike the appearance of winning cases by the back door; I dislike the idea that if I win a case that it was done by the hocus-pocus influence of an attorney who was employed because of that supposed influence. I want to say in justice to Mr. Leonard that I do not know of his ever having exercised any undue influence in our cases. I have had a large practice in Monroe; I do not know how many cases I have appeared in there. All of the cases in which I was employed were decided by Judge Boarman—probably fifty cases. I think pretty much all of them have been decided. I think most of them were decided in my favor; a large proportion of them were.

The Federal court was organized in 1880, 1881, or 1882. I commenced the first time it was ever held here. I continued until the last term before I went to Congress. My relations with Judge Boarman were pleasant until I appeared for the Government, or tried to appear for the Government, in the case of the United States vs. Jones, which, I think, was in 1888. After that they ceased to exist; I had no further relations with him since that time. My feeling since that time has been one of resentment at what I considered to be an unpardonable and tyrannical abuse of power, unpardonable and unwarranted abuse of his authority as judge of this court. I was retained by the Government to assist the district attorney in the prosecution of a large number of timber cases at Opelousas. I went from Monroe to Opelousas to assist the district attorney and found that Messrs. Leonard and Marks—I think Marks was in the case, Leonard I know was—and an attorney from New Orleans by the name of Bradford had filed demurrers to the informations on the ground that an information for cut-

ting timber on Government land was an infamous offense and therefore could not be prosecuted on anything except an indictment.

I investigated the subject as thoroughly as I could and satisfied myself that the demurrers were utterly baseless, and went into the court the next morning with the district attorney to argue them. I was brusquely informed that he would hear only one attorney for the Government. I remonstrated and said in a pleasant way that the Government had seen fit to send me all the way down there, and I was not able to come at my own expense and did not like to do it, and at the same time I did not like to charge the Government a fee for not doing anything, and requested that I be heard. He very positively declined to hear but one counsel for the Government, so the district attorney of course took precedence. The district attorney was continually interrupted by the judge, who shut him off in a few minutes. He then declined to hear anything but a brief argument from Mr. Bradford, and stated that his opinions were made up and the demurrers were manifestly well founded and he sustained them, but that in order no harm might befall anybody that the entry on the minutes should be that he took time to consider and that in the mean time he would order the grand jury to be called, so that the district attorney could go before it and get bills, and he then adjourned the court after impaneling the grand jury, and we went to New Orleans. I took no especial exception at that time.

I thought that the judge probably had not very good health or something was the matter with him. Subsequently I was informed, the next day or the day after, by Judge Pardee that he had told Judge Boarman he would not allow a ruling of that sort in his district and that he would reverse it unless he would change his opinion, and Judge Boarman had accordingly returned to Opelousas and instead of entering on the minutes the demurrers were sustained he entered that they were overruled and the cases were afterward prosecuted with the assistance of Mr. Elstner and a good many of the parties convicted, but at the urgent solicitation of Mr. Jones, the district attorney, I accepted employment in the case of the United States against Jones, a wealthy man and an influential man, I suppose. During the progress of the case, which was for cutting timber on the public land, while Mr. Alexander, counsel for Mr. Jones, was examining a witness, the judge interrupted him by asking "What is the object of that testimony?" He said it was for the purpose of showing good faith on the part of Mr. Jones. The judge thereupon said that he did not want to hear any more testimony of that kind; that he should instruct the jury that the defendant was in good faith. I said to him that that was a pivotal point in the case and I should like to be heard upon it. The case involved \$25,000 or \$30,000, or \$40,000, a very important case. He gravely replied that he would hear me but I could not address the jury upon that question. I said in my opinion it was a mixed question of fact and law that ought to go to the jury, whether good faith was to be inferred from the acts proven; of course if he would not permit me to argue to the jury I would be glad to address the court; I had given the matter thorough investigation and study. He directed the jury to be withdrawn and I arose to address the court. I said:

"If your honor, please," I believe it was as far as I got when he asked me if I proposed to maintain that the Government was not estopped by the action of its officers in accepting a deed to the land in controversy. In other words, he stated the proposition and asked me if that was what I intended to argue, and I told him "Yes." He said "I will not hear you. The court will not hear argument upon that proposition." I thereupon said to the judge I had examined that very thoroughly and had authorities to submit, but he reiterated his refusal to hear argument. I then said to him that that was the second time I had been employed by the Government in cases of considerable importance, and that was the second time he had denied me the right to appear for the Government to argue questions of law before him, and I would sever myself from any further connection with the case. I then withdrew from it and the jury found a verdict for the defendant. I feel that that action by the judge was an outrage on my rights as counsel and lawyer and as counsel for the Government, who had retained my services to protect its rights. I had often defended Judge Boarman against these attacks or charges that had been preferred against him. I had tried not to believe the charges which were made against him, but after the action in these two cases, and with the constant complaints which were coming to me from other parties and from other lawyers, I felt myself compelled by a sense of duty to prepare and submit these charges.

I have stated that you were associated with me in the case of somebody against Foster. You were retained through me, but at the request of my clients. I re-

member the amount of your fee, and I want to say in regard to that matter that so far as my observation has gone, so far as my experience has gone, that the fees that you have charged my clients have been extremely moderate. I do not desire in this testimony to reflect upon you in that respect. I told you that my clients would pay you \$150 to assist me in the trial of the case and make an argument and that it was a very insufficient fee and that I would be glad if you would appear. Understand, I do not suppose you used any undue influence at all. I say I was mortified when men would come to me and say in order to get justice in this court I have to go and employ a particular man, not because of his ability as a lawyer, but because he has influence; he has got the back door of the court. I have seen no evidence of undue influence. I do not know of your having used undue influence with the court in any case with which I have been connected. (Pages 469-473.)

• STATEMENT OF MR. LEONARD.

I have never met any of the heirs of W. T. Scott except Mr. Youree, nor wrote to them or anyone in reference to employment in that case. (Page 507.)

Agreement between Mr. Boatner and Mr. Leonard.

It is agreed that J. W. Wheaton, at the time of his death, owned \$260 worth of property, as shown by his inventory, and that the debts of his estate amounted to \$865.

Mr. LEONARD. It is admitted that Judge Boarman suggested to the attorneys of Neil & McDonald, and to the receiver by him appointed in the case of McDonald *vs.* The Lake Shore and Hudson River Railroad Company, the employment of A. H. Leonard as attorney for the receiver. (Page 507.)

STATEMENT OF M. C. ELSTNER.

[Statement of M. C. Elstner in reference to his employment in the case of the State of Louisiana *vs.* Gus Logan, for the murder of Nathan Goldkin.]

At the time of the murder M. S. Crain, esq., district attorney for the first district of Louisiana, the district in which the killing occurred, was sick and unable to discharge the duties of his office. Goldkin had no relatives living here, and it was not known that he had any living relatives elsewhere. Mr. Louis Leibman, the curator or administrator of Goldkin's succession, with the advice of his friends and the friends of the murdered man, sought my services in the case. I agreed to investigate the matter and report to them my opinion as to whether Gus Logan, the party accused of the murder, should be prosecuted. It was a case in which the defendant claimed that the killing was accidental. Upon a thorough and careful examination I became satisfied that the killing was a willful and deliberate murder. I so reported to Mr. Leibman and his friends. I was then, Mr. Crain still being unwell, employed to prosecute Gus Logan before the grand jury, before the petit jury, and, in the event of conviction and appeal, before the supreme court.

I prepared the case for the grand jury, and he was indicted for murder. I prosecuted him before the trial court and he was convicted and sentenced to death; his case was appealed; I appeared and argued his case orally and by brief before the supreme court, and the verdict of sentence was sustained. Mr. Hargrove, counsel for some of the absent heirs, stated, in giving his evidence before the Congressional subcommittee sitting in Shreveport to investigate the charges against Judge Boarman, that he notified me, before the trial and conviction of Logan, that the heirs refused and would refuse to pay me for my services in any further proceedings against him. In this statement Mr. Hargrove is mistaken. I am most positive that he never made any such statement to me. I never heard or received from him or anyone else, in any manner whatever, even an intimation that my claim would be denied until after my connection with the case had ended, as herein stated.

M. C. ELSTNER.

(Page 507.)

COMMITTEE ON THE JUDICIARY.

WASHINGTON, D. C., *May 4, 1892.*

The subcommittee of the Committee on the Judiciary, appointed to investigate certain charges against Judge Aleck Boarman, of Louisiana, this day met, Hon. Wm. C. Oates in the chair.

TESTIMONY OF ALECK BOARMAN.

ALECK BOARMAN sworn and examined:

By the CHAIRMAN:

Q. Will you give the stenographer your full name?—A. I have given him my full name, Aleck Boarman.

Q. Please give us your residence and business.—A. My residence is Shreveport. I am judge of the United States district court of the western district of Louisiana.

Q. How long have you been judge of that court?—A. I was appointed in May, 1881, now about eleven years. I had been for a number of years on the State bench, and my time expired just before I was appointed.

Q. You are aware of the nature of the charges which have been brought against you and which are being investigated by this committee?—A. Yes.

Q. The charges we propose to investigate are, first, the matter known as the Elstner case; second, the Jones case; third, the MacDonald receivership case, and fourth, that relating to money alleged in the registry of the court used by you, and the borrowing of money from marshals. Now, you may state as to them.—

A. The case of Goldkin referred to is the Elstner case. Goldkin was killed at Shreveport, and Elstner was employed by the administrator to prosecute the man indicted for the murder, and he brought suit in the State court against the administrator for fees which he refused to pay. The State court, as I thought then and do now, properly dismissed his suit, holding that the law would not hold an administrator liable for such a charge as that for counsel fees. Having had the suit dismissed, he filed a suit in the State court against nonresident heirs under a statute which we have in the civil code. He brought the suit by attachment under that statute. The suit was removed to the Federal court, and jurisdiction was maintained because of the diverse citizenship. Elstner was represented by two or three lawyers, and the case was tried before the jury and it resulted in a verdict for about \$1,000. After that verdict was given, as I sometimes do, I suggested it was too large a verdict, and unless a part of it was remitted I would give a new trial, and about half was remitted by counsel.

The parties in the suit before the State court were not the parties in the suit before the Federal court. The suit in the State court was against the administrator and the suit in the Federal court was against the nonresident heirs who inherited the estate that the administrator turned over to them. For the life of me I never could see why there was any complaint except that complaint which lawyers sometimes make as to a want of proper judicial intelligence on the part of the judge in deciding correctly, but there was no question as to the jurisdiction. There was no motion for recusation. It was suggested I was connected by marriage to my nephew, but it did not occur to me during the trial that that was a reason for recusation. It would not be a reason under the State law, and under Federal jurisprudence it is not a reason. States, you know, have laws which provide for recusation of judges. If it had been suggested to me during the progress of the trial that I ought not to have tried it, I think I would not, but it did not occur to me and did not occur to anybody that there was anything wrong in trying the case, and no motion for recusation that I know of was filed. I think I have nothing more to say upon that unless you have something to suggest.

The CHAIRMAN. Well, go on with each one and then we will cross-examine you.

The WITNESS. In the case of John R. Jones, a suit was brought by the Government of the United States against John R. Jones. The substance of the allegations were these. I might state the allegations, but I will state it so as to convey to you an idea of what the suit was about. John R. Jones bought from the Government a lot of valuable land for timber purposes running along a railway and he had been permitted to buy it for \$1.25 an acre. That particular land it turned out after the purchase was made by Jones was held for \$2.50 an acre,

and Jones had denuded the land, had taken all that was valuable to him from it when the Government discovered that the land office at Natchitoches had sold it for \$1.25 instead of \$2.50 an acre, and the Government then instituted a suit against John R. Jones. The purpose of the suit was to recover for the timber that he had taken from the land. If you gentlemen know, possibly you do not, the statute provides something in reference to the good and bad faith in taking timber from Government lands. When it was on trial assistant counsel for the Government desired to argue to the jury good or bad faith, and I declined to permit him to argue the case because there had been no evidence on the part of the Government to show any conspiracy on the part of Jones or the land office at Natchitoches; there had been no suggestion of it, and I stated in respect to assistant counsel and the jury, that the jury would not consider this question, and that as a matter of law there was no suggestion of conspiracy between Mr. Jones, who bought the land and the land office which sold to him, then there could be no subject of inquiry in reference to good or bad faith. My reason for doing that was because I had only a little while before, some two months, tried a case in Texas, and written an opinion which is given in the law books, involving precisely the same subject, and I had no doubt as to that matter.

Now, the assistant counsel, as lawyers often are, became offended at my ruling, and he and I had some personal unpleasantness. So much for the suit. In relation to that it is charged in a supplemental sort of way that the relations between Mr. Jones and myself were of such a financial sort as to have induced me to have held that view in his favor. Upon that financial question I want to say this. I never owed Mr. Jones a dollar in my life except possibly when I built a house I may have owed him for some little lumber. He has a mill. I borrowed no money from him in my life and I never had any financial transaction with him in my life in any way, except now and then I may have owed him \$50 or \$100 possibly in twenty years' time when I was putting improvements on my house. Some months or so after this suit I had occasion where I wanted to take up some indebtedness I owed to a bank, and Mr. Jones went on my paper for several hundred dollars. It was settled, and there was no obligation between him and me growing out of that transaction. To insure him so he would make no loss I left with him a life policy. At no time during the pendency of any suit against him to my knowledge in the United States courts have I been under any obligation to him except in the trifling way mentioned. Do you happen to remember his appearance on the stand?

The CHAIRMAN. Yes, I remember.

The WITNESS. In regard to the MacDonald receivership, I was vindicated by the committee upon that matter very thoroughly, I think, but I may refer to it for a moment. It came about in this way, and I am afraid I will not be very accurate about dates, but I was in New Orleans returning from my summer vacation when an application was made to me by counsel for MacDonald to appoint a receiver to take charge of a little railway running from Louisiana to Texas, a short distance. Judge Pardee had not returned to New Orleans, and he was in Ohio spending his summer vacation. At that time no intimation of any sort, either through the clerk's office or by letter, had reached me that Judge Pardee had had a suggestion made by letter—and it was only by letter that notice of the application would be made—to appoint a receiver for that road. You note that no proceedings had been had in court; and I appointed a receiver. When Judge Pardee returned, some time in November, I think, we had an understanding about it—his relations and mine are most amicable—and he thought proper to let my order stand and his, too, but to appoint another receiver, that is, to depose mine and appoint one as he thought best.

Mr. Leonard was appointed by me counsel for the receiver whom I appointed. I appointed a banker at Shreveport who was suggested to me by the counsel for MacDonald applying to me for a receivership, and while I was at Monroe that same counsel suggested to me he would be glad if I joined with Mr. Leonard, Mr. Elstner. The receiver, McCutcheon, never had any directions on that subject at all except we consented to appoint Mr. Leonard, and I did appoint both Leonard and Elstner, and you, gentlemen, I think thoroughly vindicated me in my authority to sign the first order. It was contended on the other side that the receivership had been made corruptly; that I had acted corruptly, and it was not so because the application was made to me for the appointment of McCutcheon as receiver some two or three days before I had any information from anybody that an application had also been made to Judge Pardee, and Judge Pardee and myself discussed the matter and we both had no doubt about it. He

thought it was best to appoint his own receiver. I have not anything more to say about that.

Now, in regard to money from the marshals, I want to say: In 1887 and 1888 I was holding, and one or two years since, sixteen terms of court a year. I was having my own district and the Texas district, the western, and then the eastern district. During that time I borrowed money from Marshal Weeks. I do not remember how much, but somewhere about \$200 or more, I think. Twice or three times, when I happened to be away, I gave him my due bill for it, and it never occurred to me nor was it ever intimated to me that the money was not his; and I still believe the money was his, though he on the stand did not think so. I say to you, gentlemen, I did not know nor was I told nor was it intimated to me in any way that the money was not his. I promptly paid it back when I got home. The other marshal—I think on one occasion I borrowed some money from him at Monroe when I was away from home. I was away from home, and I would want to have \$100 or \$200 to meet an obligation. I had no other means except my salary. I never traded in my life; I never bought or sold anything, and what I have I inherited it, and I have never made anything. I mean by that that I am not a prudent man in regard to money. I spend all my salary, and I suppose if it was twice as much I would spend it all; and on one or two occasions—possibly two—I borrowed money from him and promptly paid it back, and I did not know it was Government money, and that testimony was the first time I learned it may have been.

Now, I think the most serious charge against me, and one that I could not find any fault from a judicial standpoint that the committee found against me, was in reference to money from the registry. When I was on the State bench, Mr. Wheaton was clerk of the court, and when I went on the Federal bench I took him with me. He was a very honorable man and a very competent man. That was in 1881. In 1887 he was stricken with stone in the bladder and was in bed and confined to his room continuously, I think, for six, eight, or ten months preceding his death. I was at home only now and then in consequence of my having these other courts to attend that took all my time except a month or so in the summer for vacation. However, I did not feel disposed to dispossess him of the office, as he was a very poor man, and I kept him even though he was feeble. In 1888, I do not remember the date, but in the spring, he thought and I thought that he was going to die, and I confess I had not been very careful in looking after him in reference to his registry because I had implicit confidence in him, and possibly I had never talked with him about it. In the nature of things there was very little money in the court. He thought he was going to die, and I went to see him and he said to me he had some money belonging to the court, and substantially we both agreed it had better not go into his succession. I asked where it was and found it was in a commission house in Shreveport, and he gave me an order and asked me to get it for him, which I did. I think it was about \$500. You know how those things are. I thought every day he would die, and it would be the last I would see of him if I should go away.

When I got back, I forget exactly how long, he had received in some way, he told me through the marshal, \$700, or about \$600, and he told me to take that, and he said to me that that money belonged to the registry, that he was satisfied it was all there was in the registry, that the other distributions under my orders had been made, and that he had been unable for ever so long to keep up his books in reference to the registry. He had been almost in bed for six or eight months up to that time. I concluded to take the money, and I gave him a receipt for it, in which I stated I had received the two sums together, the \$500 and the \$600, and stated for what it was, that I had received it as money belonging to some suit in the court. He did not know precisely to what particular suit it belonged. I kept the money in my safe for awhile, the first \$400, and I deposited it finally, and I did not spend a dollar of it. During November (Wheaton died in October), and during the last of November Judge Pardee appointed Mr. Beattie, who was then deputy clerk, as clerk, and I told Mr. Beattie I had the money and when I had the leisure we would look over the record and run down over the cases and see to what suit this money belonged. I told him some time before I had the money waiting for him to be appointed and commissioned. He was commissioned late in January; I do not know why the delay was, but it was towards January, maybe later. When he was qualified as clerk of the court we took the books and ran over them and found that this money corresponded about in amount to what was due in the registry, held in the registry for a steamboat, the *Prince*, being a suit in admiralty about the *Prince*. The *Prince* was libeled

and sold, and this was the result, and we found all the other claims had been paid and this money belonged to that suit. Then the term for the court at Monroe comes off in April; a little while after I turned this money over, it may have been February when I gave it to the clerk.

In February—I do not remember whether it was before or after I gave the clerk the money—I caused the clerk to put on the record of the court what the law required, that with every term of court the money in the registry should be noted as so much money belonging to certain suits, and I caused him in February, the first term of court after Mr. Wheaton died, to put on the record the fact that there was so much money in the registry held for the steamer *Prince*, I think for that suit. Now, the quarrel came about, or rather the charge made was this, that I had been delinquent in the disposition of suits in order that I might hold the money. Well, the record will show, your record there, colonel, that there was no delinquency except that which belonged to the delay in court. There were a number of libel suits against this boat, against this fund, to absorb this fund, and only a portion of them amounted to about \$600 were maritime liens. The other suits were brought by persons who had sold to the captain of the boat, the boat being a trading boat, supplies and stores, and I would not allow those claims to operate as liens against the fund, and a good deal of feeling was developed on the part of the men who sold goods to the captain, they claiming that as a lien, and I would not allow it. All the other money was paid out, as the record will show here, with about the usual delays in court. The suit against the steamer *Prince* was filed at a certain time, and then six or eight months, we have only two terms of court a year, probably the next term or two terms, there was a commissioner to take testimony; but all these delays are familiar to you gentlemen because they belong to the usual way courts are managed. Now, it was suggested at the last examination that I was indebted to Mr. Wheaton—do you remember, colonel?—and I want to say upon that, on the contrary, Mr. Wheaton had been a borrower of me in a limited sense to the amount of several hundred dollars that I never even charged against him. He was an old man, and my relations to him were of a most delightful kind, and I gave him money and I never owed him a dollar in my life.

Now, I want to make another suggestion with reference to the question of my judicial knowledge. I did not know there was any law prohibiting me from taking that money from Mr. Wheaton, and I never knew it until my attention was called to it in the argument in the case. On the contrary I thought it was my duty to do it, I thought it was the best way to do, and yet technically I did violate the law in taking it, and the first knowledge I had that there was such a statute—and it is rather an unpleasant confession for a judge to make—was when the argument was made before you gentlemen. It struck me it was astounding, and when I took the statute and read it, as I said to you a moment ago, I did not feel you had from a judicial standpoint made an unfair report. I believe I told you, Judge Taylor, in talking to you that had never seen the statute.

Mr. TAYLOR. I do not remember now, but it is quite possible, I think you did.

The WITNESS. I do not know, Col. Oates, that I can go into any more detail except on a cross-examination, and I will be glad if you will cross-examine me. I think I have covered pretty fully the four points.

By the CHAIRMAN :

Q. Judge Boarman, who was the principal lawyer who conducted the defense against Elstner's claims?—A. Hargrove & Randolph.

Q. Did not Mr. Randolph testify that he did suggest or make a point for your recusation, as you called it, there after the trial commenced, or about the beginning of the trial?—A. I do not remember that he did; but if he did, it was a mistake, because I am satisfied no suggestion was made at all about the matter during the trial. Some days afterwards Mr. Hargrove—do you remember him?

The CHAIRMAN. Yes, sir.

The WITNESS. He came with some oral motion and I said it was too late, and I think no written motion had ever been filed.

Q. And you testify there was no suggestion as to your incompetency on account of the relationship at the time of the trial?—A. None in the world.

Q. Now, under the law of Louisiana when the administrator filed his account for settlement of his administration he made what they call a tableau of the assets for distribution and payment of claims?—A. Yes, sir.

Q. Well, among them was the claim of Elstner for \$1,000 for a fee for the prosecution of the murderer, which the curator proposed to pay. The record of the court shows that.—A. I am inclined to think he did.

Q. Then was there not a contest in the orphans' court, or the court having jurisdiction of Goldkin's estate, whether that fee was a proper charge against the estate?—A. There was in the State court.

Q. And the State court decided it was not?—A. That it was not a charge the administrator should pay, that he had no right to ask for counsel.

Q. On the ground that the administrator could not make the estate liable for any assumpsit of his?—A. Yes, sir.

Q. There was another question was there not in that connection, that under the statute where a man is murdered his heirs at law are deprived from inheriting unless they denounce or prosecute the murder?—A. Yes.

Q. That question was determined against Elstner's claim on the ground there was a public prosecutor?—A. You mean in the State court?

Q. Yes.—A. That question did not come up before the State court. I suppose it was simply a suit to test whether or not the administrator could pay for prosecuting this murderer because the administrator had employed him to do it.

Q. Was there not a reply that it was proper to employ him in a suit which required the heirs to prosecute before they could inherit the estate?—A. I could not say. It is likely the defense was on that line, but I did not know of it.

Q. Well, the State court decided against Mr. Elstner's claim?—A. Yes, sir.

Q. Then the estate being still in the hands of the administrator Mr. Elstner brought suit in the State court by attachment and garnishment against the heirs at law who were nonresidents of the State?—A. Yes, sir.

Q. After bringing that suit who was it, Elstner or the heirs at law or the defendants, who transferred it into your court?—A. I do not know, but I should take it that the plaintiff did.

Q. Mr. Elstner?—A. I think so, but I am not sure; but I presume he did.

Q. He is the gentleman you spoke of as your nephew, who married your niece?—A. He married the daughter of a half-sister of mine.

Q. Well, on the trial before you you say that no one who appeared for the defense suggested your disqualification by reason of relationship?—A. No one at all.

Q. The defendants, did they not, put in by way of defense the former adjudication?—A. I suppose they did; they ought to have done it.

Q. From that former adjudication the appeal lay, did it not, to the supreme court of the State?—A. Yes.

Q. And none was taken?—A. None that I know of. I suppose not, and I think I would have known of it if it had been.

Q. You overruled that defense, did you not, upon the ground the parties were different in the case before you?—A. I think I did; that must have been my reason for it.

Q. Were not the parties substantially the same as in the State court?—A. No.

Q. Did not the administrator or curator, as he is called by the law of Louisiana, represent the heirs at law in the settlement?—A. No, I think not; that is my opinion of it.

Q. Were not they parties to the litigation; were not they represented by counsel in the contest?—A. I think not. They may have been represented by counsel, but they are not parties in the suit in the State court.

Q. Under that law of Louisiana, when that tableau for distribution is made, are they not notified and made parties in that settlement? They are certainly parties to that suit or proceeding?—A. They were absent heirs, and counsel for absent heirs would notify them.

Q. Does not the law require that heirs who are interested in an estate must be before the court?—A. Should be made parties in the settlement of that succession.

Q. Then a creditor whose claim is presented to an administrator and which the administrator desires to pay and brings it before the court, is he not a party to that litigation?—A. I think not. This suit was brought by Mr. Elstner against these nonresident heirs.

Q. That is after the determination of the other?—A. Yes.

Q. And in the other court where the settlement was being made, did not the administrator represent Mr. Elstner as a claimant for \$1,000, and did not Elstner in fact participate in the litigation before the State court?—A. I cannot answer that; I presume he did.

Q. Did not the records show that?—A. I think not. You know the testimony in the Federal court was not taken down, it being a suit at law. We do not take testimony in the Federal court where a suit is submitted to a jury, and I do not know.

Q. In the plea of former adjudication in the defense, was not the record of the proceedings in the State court in that matter brought in and offered as evidence?—A. I think so.

Q. And does not this testimony taken by this committee show it?—A. I am quite sure of that, but if you will pardon me for a moment, there was no exception to the jurisdiction of the court to try that suit between those parties. There was no motion of abatement. This plea of res adjudicata was made to the court during the progress of the trial, and I held Elstner had brought the suit in the State court, against the administrator because the administrator himself had employed him, Elstner, to prosecute this murderer. That is the basis of Elstner's suit in the State court. The basis of this suit is found in an article of the civil code, the suit was brought against Goldkin's heirs, and as I thought then and I am inclined to think now a plea of res adjudicata was not good because the subject-matter of the suits may have been something similar, but the parties to the suit were not.

Q. The curator or administrator was a party also by garnishment?—A. By attachment. The administrator had this fund in his hands which he was about to turn over in the court and Elstner attached it to bring the foreign residents into the jurisdiction of the court.

Q. Was it not replied by the defense that the administrator had no right to employ (I mean in the suit before your court) counsel because there was a public prosecutor whose duty it was to prosecute, and he was proceeding to prosecute the murderer?—A. That would be a question for the jury.

Q. Did not you limit the finding of the jury simply to the value of Mr. Elstner's services and reserve all other questions for future argument and ruling?—A. I am inclined to think I did, and we had very elaborate arguments on the law.

Q. After the finding of the jury?—A. No, I think not. I think I dismissed the jury probably, but I can not recollect that accurately, but I often do and I am pretty sure I did in that case, although I will not be positive.

Q. I think the testimony shows you charged the jury to find simply on the value of the services, and they so found and returned, and afterwards arguments were made upon the legal questions?—A. That may have been done. Of course that would be the usual method, and it is likely I did take it under advisement. It is impossible to remember all these things. Let me say this, my convictions, whether in error or not were sufficient to warrant me at that time in taking that judicial view of it. It can not be a corrupt motion, although there can be an error in the conclusions I reached.

Q. Well, that is a question which the committee will pass on. Of course that is a distinction they will bear in mind.

Mr. TAYLOR. If I understand you the first case against the administrator was based upon a contract of employment by him and that the state court held that the administrator had no authority to make such a contract and impose upon the estate such a burden; that the next case against the heirs was one based upon a statute defining their duty as to a prosecution of the murderer, and thus raises an implied contract to pay for needed services in the prosecution. That is the way I understand you.—A. Yes, sir; that is the correct statement of it. I might add in reference to the matter of recusation, this Elstner has been before me for the last fifteen or twenty years as an attorney in several matters and has been prosecuting attorney for the Government for a number of years, and it is so familiar for him to be there it never occurred to me during the trial, my attention was not drawn to it in any way; but I believe if I had had my attention drawn to it I would not have tried it. And yet that involves this difficulty; you know a judge can not recuse himself because he wants to, but it must be for statutory reasons, and if I had chosen to do it, I would probably not have been authorized by law to do it; and it would have involved the coming of the circuit judge to that place to try the case some other time; so looking at it in the light of to-day, there would have been a denial there.

By Mr. BYNUM:

Q. You say he has been appearing before you ever since you have been on the bench?—A. Yes, and when I was on the State bench.

Q. How long has he been married to your niece?—A. Some fifteen or eighteen years.

Q. Before you were on the bench?—A. Yes. And another thing I might say which is more by way of argument than by way of evidence. There is not a term of court that I do not have to pass upon his fees against the Government amount-

ing to thousands and thousands of dollars, so it never occurred to me of being influenced on his account.

Thereupon the committee adjourned to meet at 1 p. m. to-morrow.

COMMITTEE ON THE JUDICIARY,
Washington, D. C., Thursday, May 5, 1892.

The subcommittee of the Committee on the Judiciary appointed to investigate certain charges against Judge Aleck Boorman, of Louisiana, this day met at 1 p. m., Col. William C. Oates in the chair.

TESTIMONY OF ALECK BOARMAN—Continued.

The CHAIRMAN (to the stenographer). Have you the testimony of yesterday written out? If so, you will please read it to the committee.

The testimony was read to the committee.

By the CHAIRMAN:

Q. Do you remember the grounds upon which Elstner caused his attachment suit to be transferred into the United States court?—A. I think it must have been because the plaintiff was a resident of Louisiana and the defendants were residents of New York. You know under the old statute the plaintiff, having filed a suit in the State court, could get a transfer on his own motion, but under the subsequent statutes of course he could not.

Q. The next case is the Jones case. Was there not a criminal prosecution against Jones for trespassing on Government land as well as a civil suit?—A. I think so, involving this same land.

Q. How was that disposed of?—A. I think that it went against him; but you must remember that the question of good faith enters into the extent of the fine, or to the extent of the judgment.

Q. Do you know the law in reference to these timber suits?—A. Where you proceed to recover a penalty there is a good deal of difference between good faith and bad faith; where it is taken in good faith under a misapprehension it is at its actual value to the person at the time.

Q. And if it is taken in bad faith?—A. It is the value on the market, and it is the value in the new condition of the timber; that is, if it is put into planks, etc.

Q. We can get that by referring to the statute. Is not it a fact that Jones, having entered a large body of this timber land at \$1.25 an acre, and when the return was made to the General Land Office the local office was notified that it was an error and the land was held at \$2.50 an acre, it being alternate sections of railroad land, gave Jones an opportunity of paying the additional amount to make his entry good, his cash entry, which he declined to do?—A. Yes, but after he had cut all the timber off the land.

Q. He declined to do that, and is it not a fact, and was it not proven, that he applied for the return of his money and obtained the \$1.25 an acre he had paid, and that the Government required him to execute something in the nature of a quitclaim deed to the land?—A. Yes, sir.

Q. Which is the practice of the Department in all cases, and this occurred after he had denuded the land of its timber?—A. Yes.

Q. And then, when the case came up against him, did you not charge the jury and rule that there was no evidence of bad faith upon the part of Mr. Jones?—A. I did, I think correctly.

Q. How do you account for his conduct towards the Government upon the principles of good faith?—A. Jones had become a purchaser of this land for \$1.25 an acre from the land office at Natchitoches and had a written title to it, which was on record both in the Federal and State records, and as no suggestion had been made that there was any conspiracy between Jones, who purchased the land from the officers at Natchitoches, and those officers who sold it, I held that by reason of that purchase, those agents being authorized to sell that land, he became possessed of an ownership to a degree in the land, and his cutting the timber from the land was all anterior to the bringing of this suit; that that ownership vested in him, in pursuance of that purchase, whatever may be its degree, in my mind so related him to the Government in consequence of the purchase as to forbid the Government to treat him as a trespasser, as in my view the only way the basis of ownership could be taken out of Jones would be

a suit in equity to recover on a failure to pay the price authorized by law, which was \$2.50; either a suit in equity, as I have said, or a compromise between Jones and the Government to turn back the land to the Government. These views were familiar to me then, because I had only a short time before heard a case at Jefferson, Tex., and rendered an opinion, which is in the law books, involving precisely the same points. When the case was submitted to court I did direct that the jury should not consider the question of good or bad faith, because of reasons I have given above. Now, that is an interesting judicial question, which is still before the Supreme Court of the United States.

Q. Was there any recovery against Jones at all?—A. Yes, sir; but I am not clear about that, and I would rather—

Q. Did not you further charge the jury that the Government, having accepted from him a quitclaim deed for this land, was estopped from recovery, and there was no verdict in favor of the Government?—A. Yes, sir; I did hold that and there is now an appeal.

Q. Do you mean now an appeal on that case?—A. Yes, sir.

Mr. BUCHANAN. Is it on appeal on the Jefferson case, or on the Jones case?

The WITNESS. On the Jones case; there was no appeal on the Jefferson case; that was acquiesced in.

Mr. TAYLOR. On the Jones civil case there was an appeal?

The WITNESS. Yes, sir.

By the CHAIRMAN:

Q. You held the Government, like an individual, was estopped in that case?—A. Yes, for the reason these agents were authorized to sell that land and did sell it.

Q. The local land office had the right to sell that land for \$2.50 an acre by virtue of the law of Congress?—A. Yes, sir.

Q. That is the authority they had to sell it at \$2.50, and not at \$1.25?—A. That is true and they should not have sold Jones or given ownership except at \$2.50.

Q. They did not so sell?—A. Yes.

Q. Was it necessary to show bad faith in Jones towards the Government that there should have been some evidence of a conspiracy between him and the local land officers?—A. I think so. I think unless some suggestion was made that he was in conspiracy with those people to buy it at \$1.25, that there was no bad faith. Now, if Jones had bought a horse, or a house, or a lot from those agents it would have been patent on the face of the sale that the agents were not authorized to sell; but he was buying land from agents who were authorized to sell at \$2.50 instead of at \$1.25. Possibly this suggestion will be of advantage to you; the question of buying this at \$1.25 and \$2.50 is on account of the proximity of the land to the railroad, and these land officers in good faith thought this land was not in the proximity of a railroad, in which case they were authorized to sell at \$2.50, but they thought it was like land generally which they were authorized to sell for \$1.25.

Mr. BUCHANAN. The transaction was the result of a mistake of fact?

The WITNESS. Yes, sir.

By the CHAIRMAN:

Q. Jones was at the head of a large milling firm and largely engaged in sawing timber?—A. Yes, sir.

Q. And he was a man of large means, was he not?—A. About that I do not know. He was reported to be a man of large means, but very recently he was broken up. He was then considered to be a man of large means.

Q. He was not convicted in the criminal case, was he?—A. Colonel, I can not answer that; I mean by that I do not remember.

Mr. BYNUM. Can you state the title of the case or opinion in which the same question was decided by you at Jefferson?

The WITNESS. It is the Federal Reporter—I don't think you have the Federal Reporter here—I can not recollect the exact date, but I will give you between limits. It was decided, I should say, between 1887 and 1889. The title of the suit was the Government *vs.* Scott and others, I think.

The CHAIRMAN. The stenographer will please read the evidence in regard to the third charge.

The evidence was read.

By the CHAIRMAN:

Q. At the time and on the day when you sat to hear the application for the

appointment of a receiver, before you made any order in the case, was not a letter handed to you from———A. Farrar.

Q. (Continuing). From Jonas, Farrar & Kruttschnitt, of New Orleans, informing you on a former day they had filed a bill, or notified that on a certain date they would apply to Judge Pardee for the appointment of a receiver at Huntsville, Ala., and requesting you not to exercise jurisdiction in the matter?—

A. A letter was handed me from that firm. I do not remember precisely what the letter stated. My recollection of it is this: That Farrar wrote to me and sent a letter to Monroe, stating that he had made by telegram, or by letter, or had given notice, you had better say he had given notice, to Judge Pardee, who was then in Ohio, that he would make an application to Judge Pardee, who was then in Ohio, and coming on his way to New Orleans. If Judge Pardee had told me that he had been in any way approached by anyone, or had told me application had been made, I would not have done it, but I did not regard Farrar's letter as anything but a piece of impertinence. I did not see why he should state a thing that the court record would show one way or another, and it did not occur to me Judge Pardee had signed anything. Mr. Farrar and myself were not pleasantly personally related, and I did not pay much attention to it.

Q. Have you read his testimony as reported by the committee, and a copy of the letter; did you receive the original of that letter?—A. Oh, yes. I do not remember the letter particularly now, but what was in my mind was that no formal application had been made by anybody to Judge Pardee, and the only knowledge Judge Pardee had in the matter was by telegram or by letter, and I went on as district judge, acting in the circuit court, without reference to Mr. Farrar, and Judge Pardee never questioned, as I understand it, the validity of the order I gave.

Q. That is about appointing the receiver?—A. Yes.

Q. But he removed the receiver you appointed and put in another one?—A. Yes, sir.

Q. Why did he do that?—A. For the reason the man whom he appointed was president of the road with which this short line connected, and Farrar's side of that suit desired him to be appointed. I appointed McCutcheon because MacDonald's side desired me to appoint McCutcheon, and I supposed Judge Pardee was influenced in the same line and reason on account of the application of Farrar.

Q. Did that receiver retain the same lawyers whom you designated to the receiver you appointed?—A. No, sir; he did not.

Q. How long did McCutcheon hold or exercise the duties of receiver?—A. I think a month or so, and the new receiver paid my receiver for his services, and the new receiver paid the attorneys I had appointed for their services by agreement. There was no order of the court one way or another.

Q. Do you know how much was charged?—A. I do not—by McCutcheon?

Q. Yes, and the attorneys?—A. I do not, colonel.

Q. I thought that record was in here, but I do not see it.—A. The reason I did not was, as soon as the new receiver came into possession the lawyers who represented him were hostile to me and they did not come to me for orders. They got all their orders, as they properly should have done if they desired to do it, from Judge Pardee.

Q. Do you wish to state any further in regard to this?—A. I think not.

By Mr. POWERS.

Q. Was this receivership made you *ex parte* or was there notice?—A. There was notice and counsel for the railway met at Monroe for the purpose of determining this issue, and the counsel for the railway agreed that for this receivership McCutcheon might be appointed, and McCutcheon was personally acceptable in every sense to the counsel for the railway company. Then after McCutcheon was appointed, as is always the case with me, I wanted to know who was to be the attorney, because in these cases the attorney is the confidential friend and adviser of the court in regard to the property in the hands of the receiver, and I did not want anyone hostile to me in any sense; and therefore I appointed Mr. Leonard, who was my personal friend and in whom I had great confidence, and who is a good lawyer; I believe there is no question as to his ability. When Judge Pardee thought proper to appoint the president of the line of railroad with which this connected, I then withdrew from the matter and from that day to this never asked anything about it, and I did not know what fees Mr. Leonard got and I did not know what fees Mr. McCutcheon got, but I knew whatever fees were allowed were in consequence of an agreement by all parties.

Q. What had the attorney of the receiver to do with the court?—A. The property is in the custody of the court through the receiver, and the counsel for the receiver is both a friend of the receiver and the court, and there are many things the court has to administer about a railroad in the hands of a receiver, and the court must be advised by some man who is competent to advise him.

Q. The court takes no action until his action is invoked by the receiver, and the receiver may apply to the court for advice and direction, but the court does not volunteer advice and direction?—A. I think he does sometimes. In the nature of things these railroads when brought into the hands of the receiver are in the agency as it were of the judge, and he administers through the hands of the receiver, with the advice of the counsel.

Q. In our part of the country the receiver applies to the court if he wants any advice, but he goes along and handles the property as he judges best for the interests of the road as a usual thing.—A. That is practically true, but yet the theory is that the judge is advised of everything he does and counsels with him. For instance, if he wants a switch or wants a bridge improved or wants to put betterments on the road, then in that matter he confers with the judge. It either comes in a confidential way from the receiver or comes through a report of a master who has been appointed to investigate the necessity of improvements, and my purpose was to have a man in whose judgment I had perfect confidence, and it occurs to me now he had been an attorney for the road when it was in the hands of a receiver before. The road some years before had been in the hands of a receiver.

Mr. BYNUM. I understood you to say informally awhile ago that there was a kind of race or contest between the different creditors as to which should get possession of this road and control the receiver?

The WITNESS. Yes, sir. Pardon me a moment and you will see it clearly. MacDonald had been the friend and creditor of this road when it was in the hands of the receiver several years before and he had cashed the receiver's certificates, amounting to \$100,000 or more, in a friendly way, and he was the owner of a large interest in the road, and he was endeavoring to foreclose and have a receiver appointed in order that he might recover against the road those certificates which he had cashed at a previous time, and he was hurrying to put the road back in the hands of a receiver with whom he would be more friendly, and other parties were working for the same thing.

By the CHAIRMAN:

Q. And Leonard was the lawyer?—A. Yes, sir.

Q. What was the name of the other suitor represented by Jonas, Farrar & Kruttschnitt?—A. I really do not remember.

Q. It was a New York firm?—A. Yes, sir; it was a New York firm.

Q. They had a large debt against this railroad?—A. Yes, sir; and it was sold out finally to satisfy that debt, and MacDonald made a compromise and got back the money that he advanced on those certificates, but of course MacDonald wanted to get in first and have his receiver appointed.

Q. In fact, Jonas, Farrer & Kruttschnitt had prepared their bill and applied to Judge Pardee before the bill of MacDonald was prepared, was it not? MacDonald found out what they were up to and got his lawyer to prepare his bill, and as Judge Pardee was absent they came to you to get in ahead of the complainant in the other bill?—A. That is the whole quarrel, and all the bad feeling in the matter grew out of that.

Mr. TAYLOR. The name of the New York parties is the Union Trust Company, of New York.

By the CHAIRMAN:

Q. The fourth charge as formulated, about which you have testified directly, reads: "That said judge has used for his own purpose the funds paid into the registry of the court and has unlawfully and corruptly failed and refused to decide cases in which the funds in the suit were or should have been in the registry of the court; and also that the respondent repeatedly borrowed money from the marshals of his court, contrary to law." You say that you borrowed money at different times from the marshals, but that you had no knowledge that the money was not their own individually?—A. I do, yes.

Q. What were the circumstances of those men; were not they poor?—A. I do not know that. Weeks was on the bond of his brother, and I supposed qualified for a considerable sum of money. What was the old man's, the marshal's, condition financially I do not know. I have learned since that he was a man of good little means.

Q. I am inquiring about the financial condition of the marshals. You knew they were each of them poor men?—A. Yes, sir; they were poor men in the sense of property interest.

Q. Did you make any inquiry as to whether this was United States money which you were borrowing from them?—A. I did not.

Q. You did not make any inquiry?—A. No, sir; I did not.

Q. What reason did you have, if any, to believe that it was the money of either of them individually?—A. Because the marshal makes three or four thousand dollars a year, and I supposed they had money of their own. One was the marshal and the other was the deputy. I did not know any reason one way or another about it.

Mr. BUCHANAN. You wanted the money and thought they had it?

The WITNESS. It was quite natural for the judge, if he did not have the money, to ask somebody who was in the department for it.

By the CHAIRMAN:

Q. You borrowed from two different marshals?—A. Yes, sir.

Q. One was a Democratic marshal appointed by Mr. Cleveland and one was appointed by President Harrison?—A. Yes, sir; during a period of eight years.

Q. Were the circumstances of each of the marshals about the same?—A. I think so, except, I think, the last marshal had probably a plantation, was a planter.

Q. What conversation, if any, occurred between you and either of them at the time of borrowing the money about refunding it to them?—A. I can not recall any particular conversation.

Q. Did not one of these marshals, the first one, Weeks, when you asked him to loan you \$300, say that he would do so, but you would have to return it by a certain time, that he would need it for some use in connection with his office?—

A. I do not know, if he did; he might have done so, but I do not think he did.

Q. If he testified so?—A. Did he so testify?

Q. If he so testified, would you doubt the fact that this conversation occurred?—A. No, I would not; I think he is a very truthful man.

Q. How about the last one; was there any conversation about the loan?—A. No; the only time I remember borrowing any money from the last one was when I was away from home. I had some obligations to meet and I borrowed some money from him and probably sent it back to meet some obligations I had at Shreveport. There was no conversation except I simply asked if he could loan me about \$300 until I could return it, or something of that sort, and in a little while I paid it back.

Q. You did return all you borrowed?—A. Every dollar.

Q. I believe that was so testified to.—A. I think I borrowed from Weeks money to pay hotel bills sometimes when I was away holding court, and I was sometimes absent from home a month or more.

Q. Did you ever, before this investigation began or about the time these charges were preferred, designate any depository of the court for money in the registry?—A. For several years after the court was organized there were no national banks in the district and no railroads running from one court place to the other, and no railroad communication with the East or with New Orleans, and for several years there was no money that I know of in the registry or to come into the court; three or four years anyhow. I do not remember that I designated any place as a depository. I am not quite sure it was incumbent on me as district judge to do so.

Q. When moneys had come into the court you did not order any depository for the registry moneys until after these charges were preferred?—A. Well, before that I think. When the banks were established in 1887 at Shreveport, I directed Mr. Wheaton to deposit in the Commercial National Bank, but whether there was any money in the registry at that time or not, I do not know.

Q. Section 995 of the Revised Statutes of the United States reads as follows:

“All moneys paid into any court of the United States or received by the officers thereof in any cause pending or adjudicated in such courts shall be forthwith deposited with the Treasurer, the assistant treasurer, or a designated depository of the United States in the name and to the credit of such court; provided, that nothing herein shall be construed to prevent the delivery of any such money upon security according to agreement of parties under the direction of the court.”

Did you ever comply with the requirements of that section, and if so, when?—

A. I do not know that I ever did; but I hold the reason that I did not was there were no means except by water courses or any conveyance of means one way or another to a depository. You will note that I am not quite sure that the district judge is specially authorized to do that.

Q. You say, then, that you did designate a bank, a national bank at Shreveport?—A. I think in 1887.

Q. Did your clerk deposit money there?—A. I think not, sir. I was not aware of it until in 1888 where he deposited.

Q. Now, when you visited him when he was sick in 1887, and he gave you moneys—A. An order for it.

Q. (Continuing). At two different times, and you got that money, what did you do with it?—A. The first time he gave me four or five hundred dollars, I am not quite sure whether I deposited in the bank; I am inclined to think that I did, but I am not sure of it, but later when he gave me that \$600, making altogether about \$1,100, I kept, I think, I am not sure, about \$400, which I put in my safe; but I know when I was going off for the summer, as I always do, I fix up a memorandum of things of a personal nature as well as of a public nature, and I put this money in an envelope with instructions about what it was for, so that if I died it would not go into my succession in any confused condition, stating that it belonged to the registry of the court.

Q. What about this last six or seven hundred dollars, what did you do with that?—A. Well, I say I put this six or seven hundred dollars, I put it away in my safe, I put the whole of it with a memorandum among my personal papers in relation to this money.

Q. Do you state you locked up these moneys in your safe or did you put them in a bank?—A. I did not put them in a bank. At that time I put them in an envelope and made a deposit, or put them in the safe of a wholesale druggist, a personal and intimate friend of mine.

Q. Do you remember the date at which you turned over the \$1,100 to Mr. Beattie, the new clerk, and took his receipt?—A. I do not remember the date, and the reason I do not remember it is this: at that time I was holding court in Texas and I was constantly away from home.

Q. Is Mr. Beattie's testimony about this and the receipt correct as to dates?—A. I think it is, and whatever the time was it was fixed with reference to this. Beattie was appointed by Judge Pardee about the first of December, and he was in the process of being qualified, having his bond approved up here until February or late in January, and when his bond was completed I gave him this money, though Beattie knew through my conversations with him there was that much money some time to be distributed.

Q. How long did you have that money in your safe?—A. Well, in my control, I suppose—what is the date of the Utz order—well, I will say in the spring of 1888 the first \$400 or \$500 was given me and along in the summer the other was given to me. I suppose you could say five or six months, seven or eight months. I will say I got it in the spring and probably had the whole of it for six months.

Q. For six months you had the \$1,100?—A. Yes.

Q. In your private safe?—A. No; I did not say in my private safe. I said when I went off for the summer away from home on a vacation I then made a deposit of the whole of it in the custody of a wholesale druggist who had been an intimate friend of mine for many years.

Q. Who was that?—A. Carter.

Q. What is his full name?—A. L. M. Carter.

Q. You deposited it with Carter, a druggist, when you went off on your summer vacation?—A. I put it away with a lot of personal papers, as I always do when I go off for the summer; I make memorandums and leave them in that way.

Q. How long were you gone?—A. I came back to Shreveport some time in October, I think.

Q. When did you go away?—A. I went away probably in August; I generally get an adjournment of court about the last of July.

Q. Then you were gone two or three months?—A. Two months, about.

Q. To what fund did that belong?—A. That belonged to the steamer *Prince*.

Q. When did you make an order for the distribution of the money?—A. I have some dates here which would be of some value upon that point.

Q. You can give them in your answer?—A. A suit was brought by De Nevue against the steamer *Prince*, and a suit of Charles Paffenbeck against the steamer *Prince*. In September, 1888, the court appointed a commissioner to take testimony on the motion of libelants' counsel. The commissioner returned part of the evidence in this case in October, 1888. Further evidence was not taken until April 9, 1889. Judgments on file, claims against the boat, amounting to \$427, were rendered and signed October 10, 1889, and paid October 12,

1889. There were a number of claims, probably a dozen or more. Judgments on the further claims, in favor of Sweeny and others, for \$195, was rendered April 14, 1890, and the amount was paid April 28, 1890. Those several sums amount to \$697. Those are the sums for which judgments were from time to time rendered, and were for maritime liens, and all maritime liens brought in court against the *Prince* have been long since paid, as shown in the receipts in said suit. The delay in causing those said sums to be paid was occasioned by waiting for the time for appeal to be taken to pass by, as there was a large amount of claims pending in this suit not coming under the head of maritime liens. There were a number of other claims filed against the steamer *Prince*, but they were not allowed, and judgment was given rejecting them, because the libelants and interveners had sold merchandise and stock of goods to the *Prince* as a trading boat.

Q. What was the date of the sale of the steamer?—A. In December, 1887.

Q. How much did it bring?—A. \$1,100. All claims were paid within the reasonable delay of a court, and at no time since I have been on the bench has any one made any demand or made any complaint about the delay of making payments or distribution of money. They were all paid on warrants issued by the judge to the clerk. No money was ever paid out by the clerk except on formal warrants issued by the judge or orders. I believe that is all in reference to the steamer *Prince*.

Q. How long after you turned over that \$1,100 before you made the order for distribution?—A. I do not know precisely. The dates say when the judgments were rendered and when payments were made in pursuance of judgment, but I do not know how long after I gave the money to the clerk before the distribution began. The dates show the first distribution was October 12, 1889; there are but two terms held a year at Monroe.

Q. Do you swear that you did not use any of that money and replace it subsequently?—A. That I did not use it? The first \$400 I am not very clear about, but my impression is I did not use any of that at any time, and I am satisfied I did not use any of the latter.

Q. If you did use any of it you replaced it?—A. I replaced it.

Q. You do not undertake to swear, then, that the \$1,100 which you turned over to the new clerk was the identical money which you had received?—A. I would about the latter part.

Q. But not about the other?—A. No. Let me please state this. When he gave me the money either the first or second time I wanted to know what particular fund it belonged to and he was unable to tell me, because he was unable to look over the books, and in the conversation either at the first time or the second time he told me that he was satisfied that that was all the money that was there, but he was unable to tell to which particular suit it belonged, as he had not kept his books posted or kept a memorandum on that subject for several months; he had been in bed then six or eight months.

Q. He did not tell you what particular money it was?—A. No, he did not.

Q. But you were aware it was money which belonged to the registry of the court?—A. Oh, yes.

Q. Well, then, how do you reconcile that with section 5505 of the Revised Statutes of the United States, which reads as follows:

“Every person who knowingly receives from a clerk or other officer of a court of the United States any money belonging to the registry of such court as a deposit, loan, or otherwise, is guilty of embezzlement, and shall be punished as prescribed in the preceding section.”

A. I reconcile it in this way. I did not know about that statute; I pledge you my word I never saw the statute or read it, or never knew of it until it was called to my attention in the argument in this case. Besides, there must be an intent before there could be any crime in that particular. That certainly means with an intent. The mere handing by the clerk of money to me to hold for him to be distributed can not be a violation of the statute. Technically it might, but I am judge of that court and he was my clerk. I could have distributed, as I did afterward through the agency of Mr. Beatty when he was appointed clerk, the money which came into my hands; but the best answer to that is that I did not know anything about that statute, and if I had I suppose I would have taken it in the presence of some notarial officer, which I think I ought to have done; but it was better for me to take it then than to have it go into his succession.

Q. Were not you aware of Rule 42, governing district courts in admiralty cases, which reads as follows:

“All moneys paid into the registry of the court shall be deposited in some

bank designated by the court and shall be so deposited in the name of the court, and shall not be drawn out except by check or checks signed by the judge of the court and countersigned by the clerk stating on whose account and for whose use it is drawn, and in whose suit, and out of what fund in particular it is paid. The clerk shall keep a regular book containing a memorandum and copy of all checks so drawn and the date thereof?"

A. The clerk did keep that memorandum; kept the book showing these things.

Q. But when you received this money you knew of this rule governing the court?—A. Yes, sir; I knew of that rule.

Q. You were judge of the district court and this money belonged in admiralty cases?—A. Yes.

Q. Under that rule was it not your duty to have deposited it in a bank?—A. Yes, that is what I should have done if I had known it applied to any particular suit, but you will note there it requires it to be deposited with reference to a suit, and you will observe from what I tell you Mr. Wheaton gave me this money and he did not know sufficiently clearly to tell me what suit it belonged to. He never paid out any money in admiralty suits except on an order formally given to him as is directed.

Q. Do you know anything about where that money was kept that was paid into the registry of the court in the case of the *Parisot*?—A. The suit of O'Neill vs. The *Parisot* was filed November 24, 1883. After the October term of that court at Monroe, when the boat was sold, and the money was paid into the registry in February, 1884, and that suit was tried in April, 1885, and judgment was signed April 13, 1885, and the money paid May 16, 1885, to Murry Smith. I do not remember anything of this matter beyond the fact that the man who applied to the clerk for the money did not have any order from the court for the money. The clerk showed me a paper which Smith relied on for his authority to collect the money, and I did not think the authorization was sufficient because it had none of the authenticated features necessary to establish or show a compromise or settlement of the suit.

Q. Did not he show that all parties had agreed to the distribution of that fund?—A. He showed in a sort of informal way, but he—

Q. Was not Smith an attorney of the court?—A. No, sir. He lived in Mississippi. I had never seen Smith before that day, and I never knew of his existence as an attorney in the case.

Q. Was he not introduced to you by an attorney of the court whom you knew?—A. He was during the day after I had declined to give him the money. He made application in the morning and I knew nothing of him; he was not an attorney of record, and was not a partner in the law firm which brought the suit until later, and when he was introduced to me I said to him he would have to make some more formal application. I saw he was wholly without knowledge of what he should do in the matter, and from the bench I declined to give him the warrant on the clerk for the money. Later some lawyers at the bar introduced him to me, and in talking over that matter I concluded it would be proper to allow him—

Q. Why did you delay the decree of distribution of that fund from February, 1884, until May, 1885?—A. The suit was not tried until 1885, and a distribution was made immediately afterwards.

Q. Was not an agreement for distribution brought in?—A. No, it could not have been brought in except in open court, and on some sort of formal motion or application. I suppose the agreement was *in esse* at that time.

Q. Do you remember at what time the agreement was presented by Smith?—A. It was never presented at all until the day he made his appearance. I think he advised me by letter that an agreement had been entered into, but that was not such authority as I would take notice of. Now, these difficulties come about in this way, if you will pardon me. The suit was filed November 24, 1883; that was after the October term and there was no court there until April of the next year, 1884, and the suit was not tried or application made in any way about the suit until 1885, and the judgment was signed April 13, 1885, and the money was paid May 16, 1885. There was no delay in the distribution. Smith was not the counsel in the case. He came into the firm, so I learned, after the suit had been filed, and I knew nothing of him personally, and I would not have issued an order except in open court on a compromise anyhow, and I could only issue it when the compromise was established before the judge, and that compromise was not established until April, 1885. I do not remember anything about the matter except I gave a warrant on the clerk for it. I am quite sure I had nothing to do with that. I do not know anything about that part of it.

Q. Did you borrow any money of the proceeds of the steamer *Parisot* from the

registry of the court or the clerk?—A. I did not, sir. I know nothing of the proceeds of the sale. It finally comes out of the hands of the marshal into the hands of the registry, and I never kept pace with any of those things.

By Mr. BYNUM:

Q. Did the clerk, Mr. Wheaton, keep his money accounts at the store which is spoken of, Utz & Smith?—A. I learned that he did in the spring of 1888, when he gave me the order on Smith & Utz for the money, \$471.

Q. His personal deposits?—A. I think that was it. I do not know anything about it except that is what the evidence discloses.

By Mr. TAYLOR:

Q. Were you present during the hearing before the committee of the Fifty-first Congress on these various questions?—A. I was present at the time.

Q. Did you testify or offer yourself as a witness in that hearing?—A. I did not.

Q. Will you, if you chose, explain why you did not?—A. One moment; I was assisted in the case by my personal friends, Mr. Leonard and Judge Marks, both of them able lawyers. I suggested to Mr. Leonard I had perhaps better go on the stand and explain some things which were not sufficient in themselves to be conclusive against me, but would leave or have some bad effect possibly on the minds of the committee. He thought there was nothing that I should answer in the matter. He did not know, as he told me then and afterwards, of the question of the existence of that statute until after the case was closed and argument was made. These reasons might not have been sufficient to have forbidden me to go on the stand, but I thought the whole matter was unwarrantably brought against me. I felt very much humiliated and I felt much out of temper.

The counsel prosecuting the case and myself were severely out, and he, much like myself is possessed of plenty of temper, and I was reluctant to go on the stand because I thought that he relished the idea of puncturing me with questions that ought not to be asked or questions not pertinent to the issue, and I believe I can sum up the whole thing by stating that I did not want to give him an opportunity to do it. In addition to that I was much out of temper. I had gout at the time which effects me very often in the head, and I did not hear that testimony which I recognize now as damaging upon this subject; but after taking the advice of counsel I concluded I should not go on the stand. In addition I was in a very bad humor and I felt as sensitive about it as a woman would feel. My life had been given to the law and I had been a judge for about twenty years and no suspicion had ever been uttered against me that I knew of, and I was a great deal hurt, and the hurt went into anger, went into bad temper, and I was afraid to trust myself on the stand after consulting with Mr. Leonard. I did not feel the force of the testimony adduced in that investigation until after it had taken a shape in which I could read it. I did not feel the force of it until the argument was made by the counsel prosecuting, and even then I did not see the effect it might have on the minds of the committee until the committee, as I thought unwarrantably, allowed the counsel to file a brief which had never been given to me and which to this day I have never seen, and which I never could answer, but was told about the brief—that is, about points in it—and I see there was a great deal of reasoning that a lawyer might color, and there was a good deal of personal feeling, and I regretted then I did not go on the stand. I endeavored to supply my omission by filing a statement with the committee. I think the committee did not consider it because it was not filed in time, possibly, for what reason they failed to—

Q. That was not sworn to.

Mr. BUCHANAN. Yes, that was sworn to.

The WITNESS. I do not recollect, but I think it was sworn to very likely. The brief contained about what I have stated to-day. When I heard the adverse report of the committee I telegraphed to Col. Thompson, and I have his telegram now in my possession telling me I would have ample time to be heard, fixing a day which would be sufficient. I was told afterwards that telegram was not advised by the committee and that it did not mean what I thought it meant. I telegraphed for an opportunity to come before the committee to make such a statement as I have made.

The CHAIRMAN. That was after you had heard of the action of the committee?

The WITNESS. Yes, sir; and I never for a moment presumed the committee would find adversely to me, although I thought there might be some difference

of opinion in the committee about what the judgment should be, but I felt aggrieved at Col. Thompson not giving me an opportunity to make such an explanation as I have made. When I was here I went to him, or I got Mr. Leonard to go I do not know which, and asked him to return to me the paper which I had filed with him which he had not admitted to be part of the evidence. He declined to do so. What his reasons were I do not know, but the paper was not his, but I preserved a copy of it, which I have.

Mr. TAYLOR. Was that your sworn statement?

The WITNESS. I think I swore to it. Now, in the trial at Shreveport the charge which most affected me and which hurt me most was the last charge with reference to the—have you the charges there, colonel?

The CHAIRMAN. Yes, sir, the seventh specification.

The WITNESS. Will you read it.

The CHAIRMAN. This is the MacDonald matter.

The WITNESS. No, the last charge charged me with being notoriously unfit for the office, and that there was a common feeling among the lawyers in the district against me which forbid them to file suits in the Federal court. It was to that effect, I can not recollect the language, and that charge hurt me more than any of the others and it was the only one I addressed any particular effort to in order to meet it.

Mr. TAYLOR. It was one about which you could not testify?

The WITNESS. I thought the committee was a little too economical in making their report in not putting numerous letters that I had received without my suggestion or solicitation from members of the bar all over the district, some thirty or forty letters which I caused Mr. Leonard to read in answer to the fifth charge. Almost every lawyer at the bar in the southern part of the State wrote me letters and assurances of confidence, etc. Those letters ought to have been put somewhere in that report, but since they have not found anything in the fifth charge, probably they thought they were not warranted in putting them in there.

Mr. TAYLOR. I wish to say myself that I had forgotten the sworn statement by you had been filed, and I did not know if any reason existed, and I asked the question simply that an explanation might be made about it which might be due you.

The WITNESS. The reason I filed it, I think possibly Col. Oates will remember, you gentlemen were hurried very much at Shreveport and were anxious to get back here, and my understanding with Col. Thompson—and Mr. Leonard bears me out in my recollection—was that if any new matters should be developed and if I desired to present any further testimony, I might do it. When the committee went to New Orleans they took new testimony on new matter and I thought I was entitled to answer that and for that reason I sent the statement which I made, the statement which I have pretty well made to-day.

By the CHAIRMAN:

Q. We would not record that because you did not come on here and testify.—

A. I did come on here.

Q. But did not offer yourself as a witness to testify; your counsel was present in New Orleans.—A. No one feels the mistake more than I do about not going on the stand, and I feel I have but imperfectly conveyed to you the condition of mind I was in at the time this case was going on. The prosecution was personally hostile to me and Mr. Leonard said, I think, that he would not trust me on the stand.

The CHAIRMAN: Now, is there any further statement you desire to make?

The WITNESS. I want to add in regard to the registry of the court Mr. Wheaton never failed to advise me by report of the amount of money in the registry, and at the first term of the court after his death the new clerk put the matter upon record as to what the registry contained. I have nothing more to say, gentlemen.

Thereupon the committee adjourned, subject to the call of the chairman.

WEARING APPAREL AND PERSONAL EFFECTS ADMITTED
FREE OF DUTY.

JUNE 1, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WHITING, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany H. R. 8535.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 8535) to limit the amount of wearing apparel and personal effects which may be admitted free of duty, having given the same careful consideration, respectfully report the said bill back without amendment, except of the title, and recommend its passage.

The tariff act of 1890 places upon the free list "the wearing apparel and other personal effects (not merchandise) of persons arriving in the United States." The only limitations upon the quantity or quality of such free importation is that the "exemption shall not be held to include articles not actually in use and necessary and appropriate for the use of such persons for the purposes of their journey and present comfort and convenience, or which are intended for any other person or persons, or for sale."

Prior to the passage of the act of 1890 the law placed upon the free list "wearing apparel, in actual use, and other personal effects (not merchandise), of persons arriving in the United States." In construing this statute the Supreme Court in *Astor vs. Merritt* (111 U. S., 212) said:

If the articles in question fulfilled the following conditions and were (1) wearing apparel owned by plaintiff and in a condition to be worn at once without further manufacture; (2) brought with him as a passenger and intended for the use or wear of himself or his family, who accompanied him as passengers, and not for sale or purchased, or imported for other persons, or to be given away; (3) suitable for the season of the year which was immediately approaching at the time of arrival; (4) not exceeding in quantity or value what the plaintiff was in the habit of ordinarily providing for himself and his family at that time and keeping on hand for his and their reasonable wants in view of their means and habits of life; they were to be regarded as "wearing apparel in actual use."

It is evident that the act of 1890 is merely a reënactment of the then existing law, and differs from it only by embodying in its language the construction of the former law as given by the Supreme Court. We have more words in the new statute, but these have no more meaning than the fewer words contained in the old.

The existing tariff law imposes no limitation as to the quantity or value of articles of wearing apparel, personal adornment, and other similar effects which may thus be imported untaxed. If they belong to the person bringing them, are intended for his own use, are in con-

dition to be worn, and are such as are appropriate for his comfort and convenience and suitable to his social standing, they are admitted free of duty.

Nor does the existing law make any distinction or limitation as to the persons by whom such articles may be imported. American citizens journeying abroad for health, profit, or pleasure enjoy the same privileges of exemption from customs duties as are given to the foreign tourist visiting our shores, or to the immigrant seeking a home among us.

The Sapreme Court of the United States, in *Astor vs. Merritt*, above cited, said:

"Persons arriving in the United States" are citizens returning or foreigners visiting or immigrating. The statute applies to all equally. If, as the result of our construction of the law it shall happen that citizens returning from abroad may obtain, as to their personal wardrobes, a *pecuniary advantage over citizens who remain at home*, that is but an *incidental advantage attendant on the opportunity to go abroad*. If foreigners visiting or immigrating are not compelled to pay duties on their unworn wearing apparel, it is merely exempting them from a tax the imposition of which has a tendency to induce them to remain abroad.

The propriety of exempting foreign visitors and immigrants from the payment of tariff taxes upon their wearing apparel and personal effects is not here questioned. As to such persons the bill herewith reported does not change the existing laws in any respect. But your committee fail to see any good reason why the privileges of this exemption should be extended to those of our own citizens whose pecuniary circumstances are such as to enable them to journey in foreign lands and there purchase their supply of wearing apparel and other personal effects at prices not enhanced by a tariff tax.

The law should not give to the wealthy American tourist a "pecuniary advantage over citizens who remain at home," and surely such an advantage should not be "incidental and attendant" on his ability to go abroad. Taxation, whether direct or indirect, should be equal. If exemptions are made at all they should be made in favor of those who are least, and not of those who are most, able to bear the burden. If the "wearing apparel and personal effects" of any of our citizens are to be exempt from the payment of tariff taxes it should be the apparel and effects of those whose limited means deprive them of the luxury of a foreign tour.

Nearly 100,000 Americans visit Europe each year for purposes of pleasure, profit, and recreation. By far the greater proportion of these are persons of large incomes. The European tour has become one of the "fads" of society. Men and women of fashion cease to be fashionable if they fail to spend the "season abroad." The extravagance and almost reckless prodigality of the American tourist has rendered him an object of wonder, amusement, and profit in every city of Europe.

All this has developed in our wealthier classes a mania for imitating the customs and fashions and aping the follies of the Old World. It is becoming to be un-American to be clad in American-made clothing. London tailors and Parisian modistes both set the styles and furnish the complete wardrobes of the rich American. The elaborate receptions, balls, weddings, and other entertainments with which our fashionable world seeks both to amuse and admire itself are resplendent with imported costumes, precious stones, jewelry, etc., brought back by their wearers as the accumulated profits of a foreign tour.

Very few of the thousands who cross the Atlantic return to our shores

without being fully equipped in foreign-made apparel. Profit as well as taste and fashion induces this. The clothing of men, women, and children is, by reason of our high and severe tariff laws, very much cheaper in Europe than in the United States. To import such goods in the ordinary course of trade would increase their cost to the consumer by the amount of the tariff tax paid upon them. The American who remains at home pays this tax. But by packing the goods in his trunks and bringing them with him as baggage, the American tourist escapes the tax altogether.

It is doubtless true that many wealthy Americans save much more than the cost of the trip by going abroad and purchasing there their supply of wearing apparel and other personal goods.

The board of general appraisers as late as March 5, 1892, gave the following construction of the existing law:

In determining what apparel is "necessary and appropriate for one's journey," and especially for one's "present comfort and convenience," regard must of course be had to the *social status, condition in life, and financial resources* of the person in question, including the reasonable customs as to dress of the *social circle* in which such person ordinarily moves.

Under this construction of the law, the correctness of which is not here gainsaid, it is evident that the wealthier the person is the greater in quantity and value is the amount of goods which he can import free of duty. In other words, his exemption from taxation increases in proportion to his ability to pay the taxes.

The present economic policy of the United States is based upon the theory of protection. It seeks to give to our domestic manufacturers a monopoly of the home market by giving to them the right and the opportunity of selling their product to their own countrymen for more than that product is worth—for more than it could otherwise be bought or sold. Unless protection does this, it does not protect.

Your committee, while not in accord with this economic policy, fully realize that this House of Representatives is powerless to effect any substantive change in that policy. In view of this fact they deem it wise that the present system, vicious as it is, should at least be made harmonious in its parts, that the burdens it imposes upon the people should, as far as possible, be equalized so as to bear with the corresponding severity upon the rich and the poor alike, and if protection is to be continued, that so long as it does exist all classes of men should share equally, if such be possible, in its supposed benefits.

It is evident that under the existing law the manufacturers of wearing apparel and of the goods from which the same are made, and all other persons directly or indirectly connected with the making of whatever is embraced in the comprehensive catalogue of "personal effects," are utterly unprotected from foreign competition so far as the same are used by men of wealth and their families.

The bill herewith reported is therefore a protective measure. It aims to protect the tailors, dressmakers, milliners, hat, shoe, trunk, and shirt makers, and jewelers of America from the legalized smuggling so long carried on by people of wealth and fashion. It recognizes that the manufacturers of wearing apparel and personal effects are just as much entitled to protection from foreign competition as are any other manufacturers in the United States. It remedies a most extraordinary and peculiar defect in the tariff law of 1890.

Your committee is not in possession of reliable data upon which to predicate an estimate of the value of the wearing apparel and personal

effects purchased abroad which are annually brought into the United States free of duty by American tourists. It is believed that the aggregate value of such importations is enormous, and that if the ordinary customs duties are collected thereon the revenues of the Government will be increased by many millions of dollars. In view of the depleted condition of the Treasury, and the heavy expenditures entailed by the legislation of the Fifty-first Congress, the passage of this bill is recommended as a measure for increasing the public revenues.

In order to show the interest manifested in the passage of this bill, your committee call attention to the fact that a petition has been presented to the House and referred to this committee, signed by 25,000 citizens of the United States, merchant tailors and others whose business interests are allied to merchant tailoring, representing, as is claimed, an aggregate of over 500,000 persons, who allege that their interests are seriously threatened by the construction which the Treasury Department has placed upon this provision of the McKinley law, and who ask for the passage of this bill or some measure similar thereto.

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MRS. SARAH E. YOUNGBLOOD AND EDMAN GREEN.

JUNE 1, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOUK, of Tennessee, from the Committee on War Claims, submitted the following

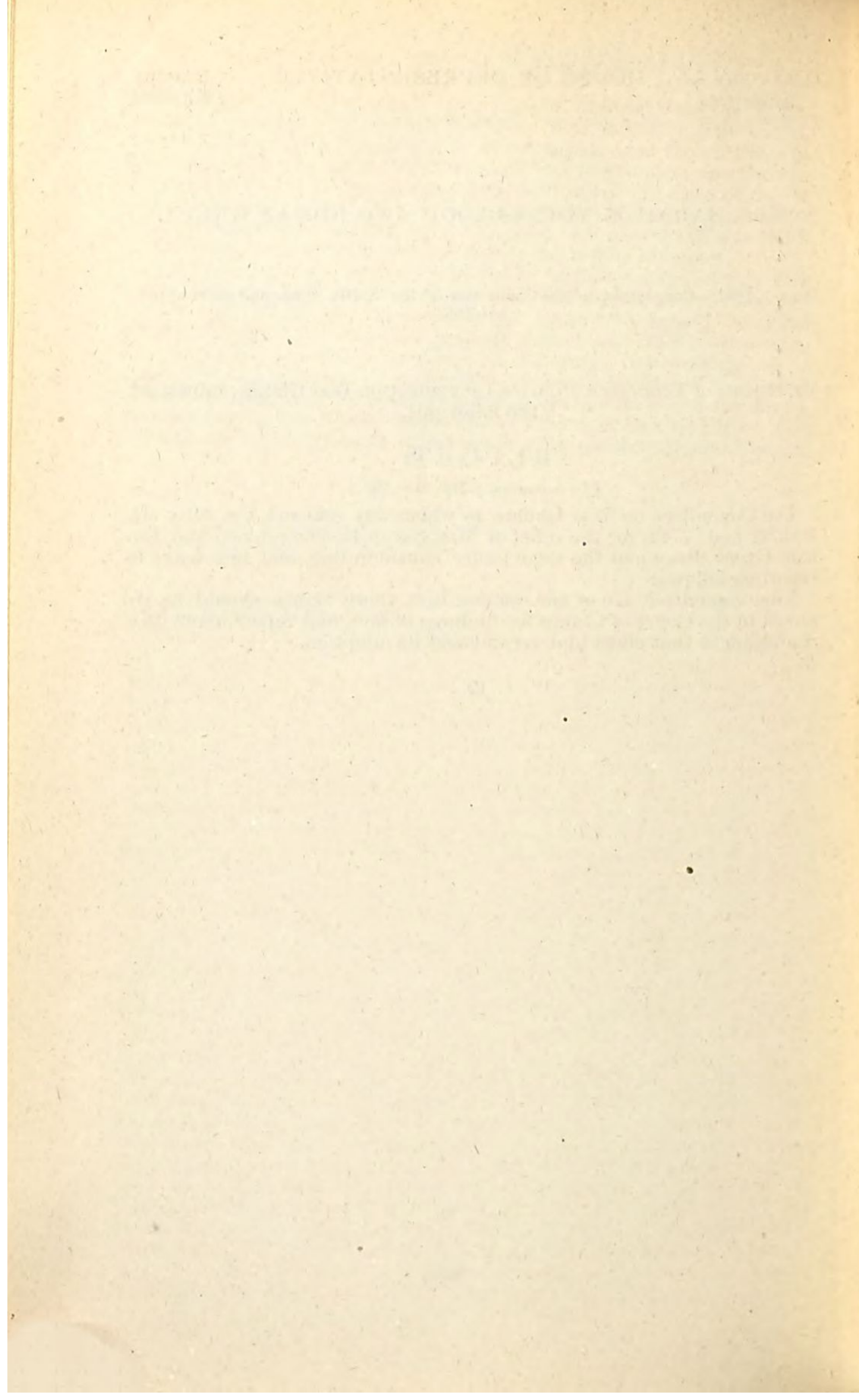
REPORT:

[To accompany Mis. Doc. 259.]

The Committee on War Claims, to whom was referred the bills (H. R. 7741 and 7742) for the relief of Mrs. Sarah E. Youngblood and Edman Green, have had the same under consideration, and beg leave to report as follows:

Your committee are of the opinion that these claims should be referred to the Court of Claims for findings of fact, and report herewith a resolution to that effect and recommend its adoption.

○



property named occurred at different times between the 4th of May, 1862, and ——— 1865, when Mr. Bigler was put in possession of the property by Federal authorities; that during the period while the property was in charge of the said Federal authorities, from May 4, 1862, to ——— 1865, the fences were taken down and consumed for firewood, the barns, tenement houses and outbuildings destroyed—the lumber in them being taken by the Federal soldiers and used by them in erecting quarters for themselves—and that the peach orchards and vineyards were destroyed through being overrun by stock in consequence of the removal and destruction of the fences which had inclosed them. As will appear by exhibits, when the Confederate forces vacated said property all was in first-class condition (see affidavit of John Parker).

Of Mr. Bigler's loyalty there can be no question. He was born and brought up in the State of New York and has always retained his citizenship therein. During the late war he was connected with the Navy Department and was one of its most trusted agents and contractors.

It will be seen, therefore, that the losses thus sustained by Mr. Bigler were not the result of accident or inadvertence, but were directly and wholly due to the deliberate purpose and design of the Federal authorities. Constructively it was, in the opinion of your committee, the taking of private property for public use, and hence within the constitutional clause which provides that "private property shall (not be) taken for public use without just compensation."

Substantially the same principles are involved in this claim as are involved in that for the relief of the heirs of Edmund Wolf, which has been twice favorably reported by this committee (see bills H. R. 7966, Report 1594, Fifty-first Congress, and H. R. 3333, Report 438, Fifty-second Congress).

On the question, is a state bound to indemnify individuals for the damages they have sustained in war? your committee invites attention to the following extracts from a report made by the late Senator Howe, of Wisconsin, to the Forty-second Congress:

Among the text writers, Vattel discusses the very question, "Is the state bound to indemnify individuals for the damage they have sustained in war?" Such damages [he says] are of two kinds: those done by the state itself, or the sovereign, and those done by the enemy. Of the first kind, some are done deliberately and by way of precaution, as when a field, a house, a garden, belonging to a private person, is taken for the purpose of erecting on the spot a town rampart, or any other piece of fortification, or when his standing corn, or his storehouses, are destroyed, to prevent their being of use to the enemy. *Such damages are to be made good to the individual, who should bear only the quota of the loss.*

The same author speaks of damages caused by inevitable necessity, and he instances "the destruction caused by the artillery in retaking a town from an enemy. These are merely accidents. They are misfortunes which chance deals out to the proprietors on whom they happen to fall."

The distinction between the two kinds of damages is clear; one is the result of accident, the other is the result of design. The sovereign, clothed with the right to make war, has the right to march troops and to fire guns. Damages which are the result of such lawful acts do not constitute a ground of claim. But whatever property the Government takes from its own obedient subjects for the more efficient prosecution of the war should be compensated for, no matter whether it be forage fed to the cavalry horses, powder burned, timber used on the fortifications, houses removed to make way for such fortifications, or houses destroyed to make them more secure,

Grotius asserts the same doctrine. He says:

The king may in two ways deprive his subjects of their right, either by way of punishment, or by virtue of his eminent power. But if he do so in the last way, it must be for some public advantage, and then the subject ought to receive, if possible, a just satisfaction for the loss he suffers out of the common stock.

Again he says:

The state has an eminent right of property over the goods of the subjects, so that the state, or those that represent it, may make use of them, and even destroy and alienate them, not only in extreme necessity, but for the public benefit; to which we must add that the state is obliged to repair the damages suffered by any subject on that account out of the public stock.

Mr. William Whiting has discussed the subject of war claims with direct reference to the liabilities of the United States growing out of the late war. He writes with extreme caution, but even he asserts that—

If the private property of loyal citizens, inhabitants of loyal states, is appropriated by our military forces for the purpose of supplying our armies and to aid in prosecuting hostilities against a public enemy, the Government is bound to give a reasonable compensation therefor to the owner.

Again he says:

When individuals are called upon to give up what is their own for the advantage of the community, justice requires that they should be fairly compensated for it. Otherwise public burdens would be shared unequally.

Again he says:

Public use does not require that the property taken shall be actually *used*. It may be *disused, removed, or destroyed*, and destruction of private property may be the best public use it can be put to. Suppose a bridge owned by a private corporation to be so located as to endanger our forts upon the banks of a river. To demolish that bridge for military purposes would be to appropriate it to public use.

Judicial authority is not less explicit than that of the text writers.

In *Grant v. The United States* (1 N. & H. Reports) the court says:

It may safely be assumed as the settled and fundamental law of Christian and civilized states that governments are bound to make just indemnity to the citizen or subject whenever private property is taken for the public good, convenience, or safety.

In that case the United States was held to pay for the property destroyed in Arizona merely to prevent it from falling into the hands of the enemy.

In the case of *Mitchell v. Harmony*, reported in 13 Howard, p. 115, Chief-Justice Taney, delivering the opinion of the court, says:

There are, without doubt, occasions in which private property may occasionally be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer charged with a particular duty may impress private property into the public service or take it for public use. Unquestionably in such cases the Government is bound to make full compensation to the owner.

If, as the above authorities declare, the state must pay for the property of a citizen destroyed to prevent *it* from falling into the hands of an enemy, *a fortiori* should the state pay for property destroyed to prevent a *garrison* from falling into the hands of an enemy.

The uniform action of Congress has been in strict accord with the principles adjudicated by the courts and declared by the commentators. Congress has recognized the principle in a great variety of cases, and, so far as can be discovered, has never denied it. The war of the Revolution was fought before we had any constitutional prohibition against taking private property for public use without compensation.

The troops for that war were furnished by the several States. Congress did not assume the obligation of making compensation for property taken by the military authority. But it clearly recognized the principle that compensation should be made. Accordingly, in 1784, a resolution was adopted from which the following is an extract:

That it be referred to the several States, at their own expense, to grant such relief to their citizens, who may have been injured as aforesaid, as they may think requisite, and if it shall hereafter appear reasonable that the United States should make any allowance to any particular State, which may be burdened much beyond others, that the allowance ought to be determined by Congress.

In accordance with that resolution, when, in 1818, Mary Brower and others petitioned for compensation to be made to them for property burned and destroyed on Long Island by the American Army on the advance of the British forces in August, 1776, the Committee on Revolutionary Claims of the House denied the prayer, not upon the ground that compensation should not be made, but upon the express ground that the sufferers ought to have appealed to the State of New York for such compensation. And, notwithstanding the resolution of 1784, Congress did pass an act for the relief of an academy in Wilmington, of which the following is a copy:

That, as an indemnification to the corporation of trustees of the public grammar school and academy of Wilmington, in the State of Delaware, for the use and occupation of the said school, and the damages done to the same by the troops of the United States during the late war, there be granted to the said corporation of trustees a reasonable compensation, payable out of any unappropriated money in the Treasury of the United States, which compensation shall be ascertained by the accounting officers of the Treasury.

The relief granted by that resolution was recommended by Alexander Hamilton, then Secretary of the Treasury.

Subsequent to the war with Great Britain of 1812 a large number of claims for similar injuries were compensated by Congress. Reference is made to a few.

An appropriation was made to William H. Washington, to compensate him for a house situate near the west end of the Potomac bridge, and which was "destroyed by order of an officer of the United States." The facts of the case, briefly stated, were that a corporal was placed in charge of the house, containing a quantity of public stores with directions from his superior officer to blow up the house in case of an attack by the enemy. Hearing guns fired on the opposite side of the river, he apprehended an attack, and accordingly blew up the stores. The committee reported that, being of opinion "the officer to whose care the public stores were committed, thought it prudent and proper to destroy the house and stores, to prevent the latter from coming into possession of the enemy, the petitioner should be paid the value of his house." He was paid accordingly.

In 1867 an act was passed to pay J. O. Arms for a house destroyed in Fairfax County, Va. That house was destroyed, as the committee reported, by military orders, and to prevent its being used by the enemy as a cover for attack, and also as a point for observation. That act was approved by President Johnson.

In 1871 Congress passed an act making compensation to the Kentucky University for buildings destroyed. The buildings were taken by military authority. They were destroyed by accident. But if the Government is required to make compensation for buildings taken and then destroyed by *accident*, it is difficult to see why it should not pay for buildings taken and then destroyed by *design*. That act was approved by President Grant.

One other legislative precedent is worthy of notice. The case of *Mitchell v. Harmony* has already been referred to. In that case the property of the plaintiff was taken by military authority. As a consequence of the taking, the goods fell into the hands of the enemy. The courts held that the taking was unnecessary, and therefore required the officer in command to make compensation for the loss of the goods. But Congress held that inasmuch as the officer acted in good faith, and for what he believed to be the interests of the Government, the Government ought to protect him against the consequences of his mistake. Congress, therefore, assumed the defense of the officer before the Supreme Court, and when judgment was finally rendered against him assumed the payment of it.

To the foregoing precedents a great many might be added. Not a single case has been found in which Congress has denied the liability assumed in the precedents cited. Not a single authority has been found controverting the principle asserted by Grotius, by Vattel, by Whiting, by the Court of Claims, and by the Supreme Court of the United States.

Your committee report herewith a substitute for the bill and recommend its passage.

EXHIBIT A 1.

STATE OF NEW YORK, *city and county of New York*, ss:

James Bigler, of Newburgh, in the county of Orange and State of New York, being duly sworn, deposes and says, that he was born in Binghamton, in the State of New York, and has been in the lumber business for the last fifty years. That in the spring of 1854, he went to the State of Virginia, and purchased two square miles of timber land on the York River, in York County, said piece of land containing two thousand four hundred acres in all.

On this land he proceeded to erect a pier and bulk-head on the river front to reach the channel of the river, said pier being three thousand feet long, and on this pier was put a railroad track to run cars containing lumber, for loading the vessels at the dock.

This pier was also used as a steamboat landing for passengers and mails. This pier, bulk-head and railroad tracks cost deponent twenty-five thousand dollars.

Deponent also built on said land near the said pier, a steam saw mill two stories high, 50 by 150 feet in size, and fully equipped with the best machinery of the time, and in the same building also a fully equipped flour and grist mill with new machinery and run of stones. This building and the machinery therein cost this deponent between fifty and sixty thousand dollars.

Deponent also erected on said grounds a large and well equipped brick yard with all modern machinery and which was in full working order at the breaking out of the war. This brick yard cost deponent between fifteen and twenty thousand dollars. Deponent also built on said tract of land the village of Bigler's Mills; the houses being owned by him and intended largely for the use of his employees. The village contained about fifteen houses, including a church and school house, and a large trading store which was exceedingly well stocked with merchandise. All of this was the property of deponent. Deponent also had planted on said tract of land twenty thousand peach trees and five thousand grape vines, which at the breaking out of the war were just beginning to mature, yield fruit, and become of value. Deponent also had on said land about six barns and many agricultural implements for working three farms, and about six or eight teams of horses and mules, a great many cattle, and about fifty pigs.

The said land was also very well fenced with chestnut rails, and the village with excellent picket fencing.

Deponent values the village at about fifteen thousand dollars, and the personal property above enumerated at about ten thousand dollars. This last item includes the stock in the store. Deponent had expended in all on this place, outside of the original purchase money, over one hundred and fifty thousand dollars, and the same was represented in values at the beginning of the war.

Deponent continued in peaceable possession of this property, and the same was in

a very prosperous condition until the 20th day of April, 1861, when a squad of armed men took possession in the name of the State of Virginia, she then claiming to be out of the Union.

The employees of the deponent either went North, as is definitely published in the New York Herald of April 24, 1861. A large portion remained on and in possession of the property. Some of these were natives of Virginia, but the majority of them were from the North, and the agents of deponent. They continued on the property until it was besieged by the Federal forces, until the 6th day of May, 1862, when the Federal gun-boats took a position in the York River opposite the property of deponent and began a bombardment of this property. They fired shells into the mill which set it on fire, and destroyed together with it valuable machinery. Also fired the wharf and destroyed the machinery, buildings, and other structures in the brick yard.

After the bombardment the Federal forces came in and occupied this and other property along the shore, and continued in possession of same during the war and until the close of hostilities, at which time deponent was put in possession again by order of the War Department.

Deponent is informed and has every reason to believe that when the Confederate forces were driven from the banks of the York River, and up to the time of leaving, they left the property intact and in good condition up to the time of the bombardment by the Federal forces, which set fire to the mill and brick yard. The after occupancy and use by the Federal forces of the remaining buildings and farms and timber land resulted in great destruction, so much so, that when deponent was again put in possession by the Government he found the property, so far as buildings, fences, and orchards aforesaid were concerned, all in ruins and destroyed, many of the buildings being torn down, the property having been used by the soldiers of the Federal Army in every way that might suit their convenience, and an entire loss to deponent.

Deponent during the war was a resident of the North, and in entire sympathy with the Government, and thoroughly loyal to the same, and at a great expense and danger to himself helping the same by furnishing materials of war, as will appear by the records of Navy Department.

After deponent got possession of the property from the Government, he sold the same to a Mr. Brokaw, of New Brunswick, N. J., receiving as consideration for the same a less amount of money than the land without the improvements had cost him, a very small sum being allowed him on account of the destruction occasioned by the war. Deponent at the close of the war having been a strong sympathizer with the Government, paid no attention to any claims against the same for the use, occupancy, and destruction of said property by the Federal forces, having made no effort to place his claims before the commission appointed to examine such matters, nor to bring the same before the courts or Congress, being ignorant of the remedies usual in such cases and only ascertaining recently the fact that the Government had uniformly remunerated her loyal citizens for property destroyed or taken by them during the war.

Deponent considers, and for this purpose refers to the testimony of others, that his losses by reason of the bombardments and the action of the Federal forces during the occupancy of his property amounts to at least one hundred and twenty-five thousand dollars.

JAMES BIGLER.

Sworn to before me this 3rd day of February, 1892.

H. V. WILDS,
Notary Public, N. Y. Co.

EXHIBIT A2.

STATE OF NEW YORK, *City and County of New York*, ss:

Simon Bigler, of Painsville, Lake County, in the State of Ohio, being duly sworn, deposes and says, that he is the brother of James Bigler, for whose relief the bill in Congress is now pending. That he participated with his brother in the erection of the works and village of Bigler's Mills, on the York River, Virginia, four miles from Williamsburgh. That after his brother purchased the said property, deponent planned, laid out, and superintended the improvement and the erection of the buildings. That the mill building was 50 by 105 feet and had an extension of twenty feet, and a boiler room 20 by 40, and an engine room 12 by 20.

That the said building cost the sum of twenty thousand dollars. That it contained modern and improved machinery and shafting which cost twenty-five thousand dollars. That to place said machinery in proper position and so that the same could be used efficiently, the cost of labor, common and skilled, was sixteen thou-

sand dollars. That the grist mill was exceedingly well equipped, having two runs of stones and a complete set of flouring machinery, and which cost four thousand dollars. That abutting from said property into the York River, used as a steamboat landing and for all docking purposes, was a wharf and bulk-head three thousand feet long and equipped with a tramway railroad for running lumber, flour, brick, and other material on cars, and which cost twenty-five thousand dollars. That the amount of damage caused by the occupancy of the Federal soldiers in the destruction of the said buildings and fences amounted to five thousand dollars. That the brick mill, sheds, and machinery appertaining to the manufacture of brick on said property, and which cost fifteen thousand dollars, was destroyed. That deponent had planted for his brother, superintended, and cultivated an exceedingly valuable peach orchard (20,000 trees) and grapery (5,000 vines) which at the time of the occupancy of the Federal troops had reached maturity and had just begun to bear fruit, having yielded a crop the year before. That deponent had prepared crates and other receptacles for the coming season. This orchard and grapery was worth, at the least, thirty-five thousand dollars, making a total of property lost and destroyed to the brother of deponent in value to the amount of one hundred and forty-five thousand dollars.

Deponent, in making his estimate of the cost of the above items, speaks from actual knowledge, gained on the ground where he received the property and directed the labor in the erection of these buildings, and in addition deponent has had large experience in the building, equipment, and running of mills of the character of the one destroyed on the York River, being himself the owner of a flour mill in the State of Ohio, and has built many other mills in the State of New York.

That the brother of deponent and deponent himself were throughout the war active supporters of the Government and in entire sympathy therewith.

And deponent, for his brother, had manufactured and had carried to the front, under great difficulty, large amounts of war material, gun carriages, etc., for the aid of the armies of the United States.

S. BIGLER.

Sworn to before me this 3rd day of February, 1892.

GEO. D. VAN DER BOGERT,
Notary Public, Kings Co. Ct., filed in N. Y. Co.

EXHIBIT A3.

COUNTY OF YORK, *State of Virginia*, ss:

Personally appeared before me, this 28th day of March, 1892, John Parker, who upon oath deposes and says, that he is a resident of the county of James City, State of Virginia; that he is seventy years old; that on the 5th and 6th of May, 1862, he was employed at Bigler's Mills, on York River, Virginia, and distinctly recalls the shelling and destruction of said mill, brick-yard, and wharf by the Federal gun-boats on said dates; that he also distinctly recalls the fact of said wharf being set on fire by Federal marines belonging to one of said gun boats, who applied cotton saturated with spirits of turpentine thereto; that said mill and brick-yard was set on fire and destroyed either by shells fired at it from said gun-boats on the date stated, or by fire communicated thereto from the burning wharf; that on said days there were no Confederate troops in the neighborhood of said mill, brick-yard, and wharf, and affiant can positively state that their destruction was occasioned in the manner herein stated.

Affiant further deposes and says that on April 20th, 1861, when the Confederate authorities, through their armed troops, took forcible possession of said property, until on or about May 4th, 1862, when they relinquished and vacated the same, the wharf, mill (with all its machinery and appliances), brick-yard, store, barns and other buildings, also all the fences and the peach orchards situated on and pertaining to said property were intact and in excellent condition, and that the damages which said property sustained occurred after May 5th, 1862, and during its occupancy by the Federal troops, and was solely due to their acts.

Affiant further deposes and says that immediately after the destruction of said wharf, mill, and brick-yard by the Federal gun-boats, as herein stated, the Federal troops took possession of and occupied and controlled the grounds and remaining premises attached to the Bigler Mill property; and that while thus occupying the same they made free use of and either destroyed or carried away large numbers of fence rails, posts, boards and timbers, of which the barns and other buildings situated on said property were constructed, and in other ways greatly damaged said property and its improvements.

Affiant further deposes and says that during the time said property was thus occupied by the Federal troops, the large and valuable peach orchards which were

set out and planted thereon by Mr. Bigler were destroyed through their being overrun by horses, cows, and other animals in consequence of the taking down and destruction of the fences with which they had been inclosed.

Affiant further deposes and says that from May 5th, 1862, to May 5th, 1863, he continuously resided on the Bigler property herein referred to, and has personal knowledge of all the facts stated.

B. H. EWAN, *J. P.*

MARCH 28, 1892.

EXHIBIT A4.

This twenty-fifth day of February, 1892, personally appeared before me, A. C. Peachy, a notary public in and for the county of James City, State of Virginia, John T. Parker, who, being duly sworn, deposes and says that he is forty-two years of age, and has been a resident of the county of York, State of Virginia, since 1855, and since that time has been living near a place on York River, known and designated as "Bigler's Mills," also in said county, and situated on the York River; that he distinctly recalls the time when the Federal gunboats *Marblehead*, *Pioneer*, and others, whose names the affiant does not now recall, came up the York River, on the 5th of May, 1862, and distinctly recalls the fact that said gunboats on that day shelled and attempted the destruction of said place, Bigler's Mill; and that they continued shelling it until they discovered the white flags which were there displayed and that its only occupants were women and children; that he also distinctly recalls the fact that on the following morning, May 6th, 1862, he saw the said Bigler's Mills and wharf in flames, and that they continued burning during most of said day, and that in consequence of said fire it was entirely destroyed; that to the best of affiant's knowledge and belief the destruction of said mill and wharf was caused by the shells thrown by said gunboats; that on the 7th day of May, 1862, affiant in company with his father, John Parker, went over and inspected the premises in and about said mill and discovered a number of shells in close proximity to where said mill had stood.

JOHN T. PARKER.

This twenty-fifth day of February, 1892, personally appeared before me, A. C. Peachy, a notary public in and for the county of James City, State of Virginia, Mrs. Valeria B. Kellam, who, being duly sworn, deposes and says that she is now seventy-nine years old; that she has been a resident of York County, Virginia, since 1860, and that from said year until 1866 she resided at a place known and designated as "Capahosack," situated on the York River and adjoining the place known and designated as Bigler's Mills, and also in said county and State, and situated on the York River, between the towns of West Point and Yorktown, Virginia, being about fifteen miles from the former and twelve miles from the latter of said towns. Affiant further deposes and says that she distinctly recalls the time when the Federal gunboats *Marblehead*, *Pioneer*, and others, whose names she does not now remember, came up the York River on the 5th of May, 1862, and also distinctly recalls the fact that said gunboats on that day shelled and, as she believes, attempted the destruction of both of said places, Capahosack and Bigler's Mills, and that they continued the shelling of said places until they discovered the white flags which were displayed from both of said places, and that their only occupants were women and children.

Affiant further deposes and says that she distinctly recalls the fact that on the following morning, May 6th, 1862; she saw Bigler's Mills and wharf in flames; that they continued burning during said day, and that in consequence of said fire they were entirely destroyed.

VALERIA B. KELLAM.

Mrs. Caroline J. Newman, being duly sworn, deposes and says that the foregoing affidavit has been read to her, and that she concurs in all the statements contained therein. That at the time she was about nineteen years old, and resided with her mother, Mrs. Valeria B. Kellam, the aforesaid affiant, at "Capahosack," and distinctly recalls all the facts and circumstances connected with the shelling and destruction of Bigler's Mills and the wharf adjoining same. That within a few days after said mill and wharf was thus destroyed affiant was at the Bigler place, and discovered in close proximity to where said mill had stood several shells which had been thrown by said gunboats.

CAROLINE J. NEWMAN.

Sworn and subscribed to before me, a notary public in and for the county of James City, State of Virginia, this 25th day of February, 1892, by the foregoing parties, viz: John T. Parker, Valeria B. Kellam, and Caroline J. Newman, all of whom are well known to me.

Given under my hand and seal this 25th day of February, 1892.

A. C. PEACHY,
Notary Public, James City Co., Va.

This 25th day of February, 1892, personally appeared before me John Parker, who upon oath deposeth and says that he is a resident of the county of James City, State of Virginia; that he is seventy years old; that on the 5th and 6th of May, 1862, he was employed at Bigler's Mill, on York River, Virginia, and distinctly recalls the shelling and destruction of said mill and wharf by the Federal gunboats on said dates; that he distinctly recalls the fact of said wharf being set on fire by Federal marines belonging to one of said gunboats by applying cotton saturated with spirits of turpentine; that said mill was set on fire and destroyed by shells fired at it from said gunboats; that on said days there were no Confederate troops in the neighborhood of said mill and wharf; that the affiant was employed at said mill for several years before the said burning.

his
JOHN X PARKER.
mark.

Witnesses:

A. C. PEACHY,
W. H. MAGEE.

Sworn and subscribed to before me, a notary public for James City County, State of Virginia, 25th day of February, 1892.

A. C. PEACHY,
Notary Public, James City Co., Va.

EXHIBIT B.

UNITED STATES GUNBOAT CHOCURA,
Off Yorktown, Virginia, May 4th, 1862.

SIR: I have the honor to report that in obedience to your order of this morning I left Gloucester Point at noon and at 1:30 was joined by Lieutenant Commanding Thomas L. Phelps, of the *Corwin*. We proceeded up York River prepared for action, but found every house deserted apparently, except by females and negroes. A white flag was displayed as we approached. Bigler's wharf we found burning at each end, and in the immediate vicinity, over two buildings, hospital flags were flying. Zantzinger's wood and coal wharf above Bigler's and on the opposite side is destroyed in several places. On reaching West Point the narrow channel and shoal water prevented my approach, and it was too late to do so in boats; but I could easily distinguish the flames of two vessels (apparently intended for gunboats) on fire and partially consumed. Near the point is a small battery with three embrasures which was destroyed, and I think without any armament. There also a white flag was displayed. There are no obstructions in the channel of the river nor batteries on its banks.

Very respectfully your obedient servant,

T. H. PATTERSON,
Lieutenant Commanding.

Commander W. SMITH,
United States Steamer Wachusett, off Yorktown.

Previous to sending the *Chocura* up the river, Commander Smith sent the *Corwin*, Lieutenant Commanding Phelps, and the *Currituck*, Acting Master Shankland, to reconnoitre up said river to the distance of ten miles. At 2 p. m. the *Currituck* returned and her commander reported that he had been about twelve miles up the river; that Bigler's wharf, ten miles above, was burning, and he had not seen any batteries on the banks. "Just as the *Currituck* returned," Commander Smith reports,

"I received a dispatch from General McClellan saying that it was of the first importance that some boat should hurry up and destroy the transportation."

The above letter and extracts are found in H. R. 2065, report Secretary of Navy, 3rd session, 37th Congress, Vol. 3, 1862-3.

The gunboats which went up the York River at the time in question were the *Sabago*, *Chocura*, *Currituck*, and *Corwin*.

The battle of Williamsburg was fought either on the 3rd or 4th of May, 1862, the 3rd being Saturday it appears the gunboats in question went up the river on Sunday the 4th.

EXHIBIT C.

[Extracts from War of the Rebellion. Series 1, Vol. XI, Part 3. Correspondence.]

Major-General McCLELLAN, *Comd'g*:

Bigler's wharf is burning. There are no batteries for 12 miles up the river. I have sent steamer to burn the railroad bridge over the Pamunkey River.

SMITH.

Steamer *Chocura* has just returned from West Point. No obstructions or batteries on the river. No guns or troops at West Point. White flags at that place and at other points on the river. The frames of two large vessels building at West Point.

W. SMITH, *Comd'g*.

MAY 4, 1862.

Com. SMITH, *Comd'g Fleet*:

SIR: I learn that a large part of the rebel forces marched to Bigler's Mills, on the York River, last night to take sail from there to West Point. It is of the first importance to my operations that some of your gunboats hurry up to West Point to destroy transportation and report to me the state of affairs. Flaukin's division will be ready to come up under convoy of the other gunboats as soon as I can hear from the river.

GEO. B. McCLELLAN,
Major-General, Comd'g.

COURT OF CLAIMS.

JUNE 2, 1892.—Ordered to be printed.

Mr. GOODNIGHT, from the Committee on the Judiciary, submitted the following

REPORT:

The Committee on the Judiciary, having had under consideration the resolutions calling upon the Chief Justice of the Court of Claims for certain information, report the same back with the recommendation that they be passed.

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REIMBURSEMENT OF CERTAIN MONEY TO THE STATE OF NEBRASKA.

JUNE 2, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BYRNS, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 2476.]

The Committee on Claims, to whom was referred Senate bill 2476, to reimburse the State of Nebraska the expenses incurred by that State in repelling a threatened invasion and raid by the Sioux in 1890 and 1891, report in favor of the passage of this bill.

The Sioux Reservation, with its 18,000 square miles, occupied by about 22,000 Sioux Indians, is located in great part in South Dakota, along the northern border of Nebraska, and in part in the last-named State. Brave and warlike, and retaining much of their original savagery, they are a foe to be feared, and their outbreak or threat of war causes dreadful anticipation among all settlers in their vicinity. The events of the winter of 1890-'91 are too notorious and of too recent a date to need more than the faintest reference to them. Trouble threatened during all of the summer and fall of 1890, and in November was so imminent and a threat of such magnitude that, with Gen. Miles in command, a large body of United States troops was placed within striking distance of the hostile Indians.

The whole border was greatly alarmed and many settlers fled from their farms, taking refuge in the towns in northwestern Nebraska. Indeed such action was recommended by the officers of the Government and the War Department distributed arms among the frontiersmen for their better protection. The latter part of December, 1890, after the battle of Wounded Knee and the retreat of about 4,000 hostile Indians to the Bad Lands along White River, about 15 miles from the Nebraska line, a general Indian war involving all the tribes of the powerful Sioux Nation seemed unavoidable and danger to life and property was great. On January 2, 1891, the governor of Nebraska ordered the First Brigade of the Nebraska National Guard to the frontier to coöperate with the United States troops under Gen. Miles. The First and Second Regiments responded promptly and under the command of Gen. L. W. Colby took positions as indicated in the following plan:

These troops were moved by rail from different parts of the State, and Company A, light artillery, and Troop A, of cavalry, were placed and held in readiness to move. The headquarters of the brigade were established at Rushville, Nebr., and the danger was threatening for a distance of 150 miles east and west and for 30 miles north and south. Hundreds of settlers had fled from their homes, leaving their stock and property uncared for. At Chadron alone there were 130 families of

settlers gathered in from the neighborhood, dependent upon the public for shelter and food, and much the same condition obtained in all the frontier towns. Gen. Colby established a line of fortified posts or camps north of the line of towns on the Elkhorn Valley Railroad, with a reserve force at each important town.

The appearance of the State troops gave encouragement and confidence to the people, and the National Guard was a valuable adjunct to the troops of the Government stationed on the Indian reservation. Gen. Miles approved of the disposition of the State troops. Many of the settlers returned to their homes. Strict military discipline was maintained in all the camps, and the National Guard of Nebraska won additional credit by prompt, cheerful, and able performance of their duties. On January 12, 1891, Gen. Miles communicated with Gen. Colby that the Indians showed every disposition to comply with the orders of the authorities. He said:

I feel that the State troops can now be withdrawn with safety, and desire, through you, to express to them my thanks for the confidence they have given your people in their isolated homes.

On January 13, Gen. Victor Vifquain, adjutant-general of Nebraska, wired Gen. Colby:

Your command will remain at the front until the lives and property of citizens are perfectly secured. Be more vigilant than ever; advise me daily. You will withdraw your command when everything is safe, not before.

On January 14, with the approval of Gen. Miles, Gen. Colby moved the troops to their homes. The campaign was made in the depth of winter in a country affording the severest of weather, and officers and soldiers vied with each other in the performance of their duty.

The following letter, lately received from the adjutant-general of Nebraska, is self-explanatory:

STATE OF NEBRASKA, OFFICE OF ADJUTANT-GENERAL,
Lincoln, March 5, 1892.

DEAR SENATOR: I mail you this day the report of the Indian campaign of 1890-'91, as submitted to the legislature, duly certified to by the governor. The legislature loaned the money, so to speak, until the Federal Government should refund the same. I call your attention to pages 17 and 19 for dispatches of Gen. Miles, especially page 17, the last sentence of which commences: "I feel that the State troops can now be withdrawn with safety," etc. This shows that the State troops were needed, that they did not go to a picnic in midwinter. The truth is that the position occupied by the Nebraska National Guards cut off the last chance for the escape of the Indians west of the Black Hills.

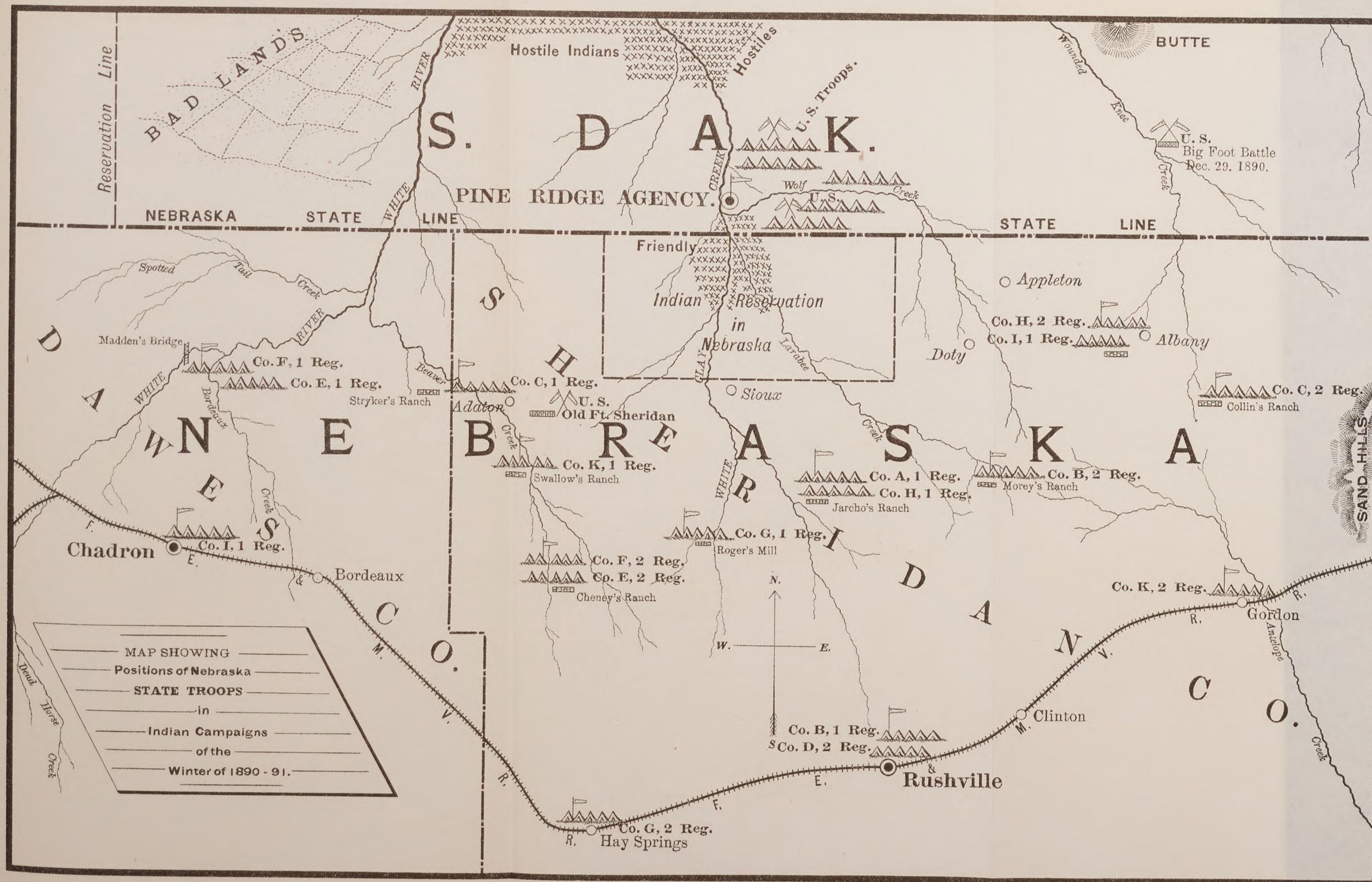
The legislature appropriated \$37,200; I asked for \$40,000. They thought they knew better than I did and they were mistaken; it will certainly take \$42,000 to settle everything.

I do not think that you wish to be burdened with one thousand different vouchers. The appropriation clause can read "\$42,000, or as much thereof as necessary, the same to be at the disposal of the Secretary of War, to be paid to the State after the vouchers have been submitted to that official," or words to that effect. We will then take steps to present the vouchers which I am now compiling for the purpose. Do you not think this the best way?

I am, Senator, yours respectfully,

VICTOR VIFQUAIN,
Adjutant-General.

Senator CHAS. F. MANDERSON,
Washington, D. C.



NEW MADRID LOCATION SURVEY.

JUNE 2, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. DE ARMOND, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany S. 3036.]

The Committee on the Public Lands, to whom was referred the bill (S. 3036) entitled "An act to confirm New Madrid location survey numbered twenty-four hundred and seventy-five, and to provide for the issue of a patent therefor," having considered the same, recommend its passage for the reasons set forth in the Senate report, which they adopt, and which is as follows:

This bill has received the approval of the Secretary of the Interior and the Commissioner of the General Land Office, and communications from these officers are printed with this report. The merits of the measure will appear from the following statement:

By act of Congress approved February 17, 1815, it was provided that any person owning lands in the county of New Madrid, Missouri Territory, which had been materially injured by earthquakes might locate a like quantity of land on any of the public lands of that Territory, the sale of which was authorized by law, the titles to the lands so "injured" to revert to the United States when a new location should be made.

Thomas Huff, sr., was the owner of certain lands which had been "injured" in the sense of the act referred to, and Asa Morgan and Charles Lucas, who held under him, relinquished those lands and made a new location in the name of Huff on the 26th of October, 1816.

This location was surveyed in December, 1816, and returned to the recorder of land titles in 1819. It embraced the land described in the bill and other lands.

The lands embraced in the location at the date thereof were unsurveyed and unoffered and therefore did not fall within the class of lands authorized by law to be sold, and were not subject to be located under the act of February 17, 1815, and preemption entries were made of most of them within a few years after the date of the location, which gave rise to controversies. No such controversy arose as to the land described in the bill, which the Commissioner of the Land Office states is "the only land embraced in said location which appears to be free from conflict."

On this land the city of Boonville, Mo., is situated, and the town property is held by titles derived through Lucas and Morgan, under the location made in the name of Thomas Huff, in 1816.

In January, 1892, more than seventy-five years after the date of that location, one A. C. Widdecombe applied to the land office at Boonville to enter this land at ordinary private entry, and his application was rejected by those officers, and also on appeal to the General Land Office.

Widdecombe has filed a notice of his intention to take a further appeal to the Secretary of the Interior.

The purpose of this bill is to cure the irregularities in the title to the land in question, arising out of the location made when the land was unsurveyed and unoffered, and not subject to sale in the sense of the act of February 17, 1815.

There appears to be no adverse claim to this land except such as arises out of Widdecombe's notice of his intention to take a further appeal to the Secretary of the Interior upon his rejected application.

The Commissioner of the General Land Office has expressed the opinion that Wid-

decombe "could not, under the circumstances, acquire any right by such application as against the occupants of the town who claim under the New Madrid location, which still remains intact upon the record," and says, "the rights of the claimants under the location should be confirmed."

As the Secretary of the Interior, who is to pass upon Widdecombe's "further appeal," agrees with the Commissioner that this bill should become a law, it is not considered that Widdecombe's mere notice of a further appeal should stand in the way of the curative legislation proposed in this bill.

DEPARTMENT OF THE INTERIOR,
Washington, May 20, 1892.

SIR: I am in receipt, by reference from you, of Senate bill No. 3036, entitled "A bill to confirm New Madrid location survey No. 134, and to provide for the issue of a patent therefor," with a request for an expression of the views of this Department thereon.

I herewith transmit the report of the Commissioner of the General Land Office on said bill. I agree with the Commissioner in his opinion that said bill should become a law.

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. J. N. DOLPH,
Chairman Committee on Public Lands, United States Senate.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 7, 1892.

SIR: I have had the honor to receive, by reference of the 5th instant, from the Hon. George Chandler, First Assistant Secretary, Senate bill No. 3036, entitled "A bill to confirm New Madrid location survey No. 134, and to provide for the issue of a patent therefor," which was transmitted to the Department by Hon. J. N. Dolph, chairman of the Senate Committee on Public Lands, with a request for your views thereon, and referred to me as above for report in duplicate and return of papers.

The said bill provides as follows, viz:

"That the Commissioner of the General Land Office is hereby authorized and directed to issue a patent conveying the title of the United States to Charles Lucas and Asa Morgan and their legal representatives and assigns in and to the northeast fractional quarter of section thirty-five, in township forty-nine, of range seventeen west, south of the Missouri River, which said land was located by the said Lucas and Morgan under a New Madrid certificate of location numbered one hundred and thirty-four, and upon which land the city of Boonville, Missouri, is now located."

The following are the facts of the case, viz:

It appears that a location was made of a New Madrid certificate of location, No. 134, in the name of Thomas Huff, sr., embracing the land referred to, under the act of Congress of February 17, 1815 (3 Statutes, 211). This location was made October 26, 1816. The survey thereof, No. 2475, was executed in December, 1816, and returned to the recorder of land titles April 13, 1819. As shown on the township plat in this office, it embraced fractional section 26, a portion of the NW. $\frac{1}{4}$ of sec. 35, the NE. $\frac{1}{4}$ of sec. 35, portion of the SE. $\frac{1}{4}$ of sec. 35, and a portion of the SW. $\frac{1}{4}$ of sec. 35, all in T. 49 N., R. 17 W., fifth principal meridian, south of Missouri River, containing 530 arpents, or 425.35 acres, as described by usual subdivisions of public land.

It further appears that fractional section 26 and the northwest quarter of section 35 are embraced in a preëmption entry in the name of Hannah Cole, Franklin certificate No. 185, for which patent was issued November 19, 1822, recorded in patent records, vol. 1, p. 305, in this office.

The southeast quarter of section 35 is embraced in a preëmption entry in the name of David Burris, Franklin certificate No. 99, for which patent was issued August 31, 1820, recorded in patent records, vol. 1, p. 180, in this office.

The portion of the southwest quarter of section 35 covered by said location is embraced in a preëmption entry in the name of William Savage, Franklin certificate No. 59, for which patent was issued July 1, 1824, recorded in patent records, vol. 1, p. 89, in this office.

The only land embraced in said location that appears to be free from conflict is the northeast quarter of section 35.

It appears from the records in this office that the new location was made in the

name of Thomas Huff, sr., the original owner, by Asa Morgan and Charles Lucas, who relinquished the injured land as owners by transfer from Huff, through one Tanner.

It appears that at the time said location No. 134 was made, viz, October 26, 1816, the land embraced therein was unsurveyed and unoffered, and therefore not of the class the sale of which was authorized by law. (See the decision of the honorable Secretary of the Interior in the case of Britton Williams, whose preëmption claim for land in said section 35 and the adjoining section 36 conflicts with the New Madrid location, No. 135, in the name of Thomas Huff, jr., volume 14, Land Decisions, page 3.) It is proposed to cure irregularities existing in the case by new legislation.

It further appears that on the 11th January, 1892, A. C. Widdecombe applied to the register and receiver at Boonville for the entry of the land involved in this case at ordinary private entry, and his application having been rejected by the register and receiver, and on appeal by this office also, he has filed a notice of his intention to take a further appeal to the honorable Secretary of the Interior.

It is understood that the city of Boonville is situated on said NE. $\frac{1}{4}$ of Sec. 35, T. 49 N., R. 17 W., and that the town property is held by titles derived through said Lucas and Morgan, under the said location.

There appears to be no adverse claim to that tract known to this office except Widdecombe's application above mentioned. I am of the opinion that he could not under the circumstances acquire any right by such application as against the occupants of the town who claim under the New Madrid location, which still remains intact upon the records.

I am of the opinion that the rights of the claimants under the location should be confirmed. I therefore recommend the passage of the bill, after correcting the title as regards the number of the survey from 134 to 2475, the former being the number of the certificate of new location and the latter that of the survey.

The said bill is herewith returned.

Very respectfully,

THOS. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

JOHN H. McBRAYER.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 1595.]

The Committee on War Claims, to whom was referred the bill (H. R. 1595) for the relief of John H. McBrayer, submit the following report:

This case is a claim for stores and supplies alleged to have been taken by or furnished to the military forces of the United States for their use during the late war. Claim stated at \$3,200.

The claim was filed in the War Department under the act of July 4, 1864, and was investigated by an agent of the Quartermaster's Department, who reported that the stores were taken and used as charged, and that the claimant was a loyal citizen. The Quartermaster-General rejected the claim for the reason that he was not convinced of the loyalty of the claimant.

The loyalty of the claimant is established beyond a doubt, and your committee is of opinion that great injustice was done claimant by the Quartermaster-General, and report back the bill and recommend its passage.

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WILLIAM N. ROBB.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 9091.]

The Committee on War Claims, to whom was referred the petition of William N. Robb, ask leave to submit the following report:

This is a claim for 12 mules, at \$165 per head, claim stated at \$1,980, which the claimant alleges were taken from him by the authorized agents of the United States Government at Louisville, in the State of Kentucky, in February, 1865, and shipped from there to Nashville, Tenn.

It appears from the evidence that the claimant was engaged in selling mules to the Government, and that in the spring of 1865 he shipped 30 mules to Louisville for that purpose. The Government agent at Louisville received the mules and paid for 18 of them. The remaining 12 he seized as Government property, alleging that they were branded and had never been condemned. Subsequently the claimant applied to the Quartermaster-General for payment for the 12 mules. That officer rejected the claim for the reason that he was not convinced of the ownership of the property.

The proof is conclusive that the claimant purchased the mules in good faith at a Government sale and should be paid for the same.

The committee report herewith a bill for the relief of the claimant and recommend its passage.

HEIRS OF JOHN BOWLING.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany Mis. Doc. 260.]

The Committee on War Claims, to whom was referred the bill (H. R. 8821) for the relief of the heirs of John Bowling, deceased, submit the following report:

This case being a claim for property alleged to have been taken by or furnished to the military forces of the United States for their use during the late war for the suppression of the rebellion, the committee is of opinion that the claim should be referred to the Court of Claims for a finding of facts under the provisions of the act of March 3, 1887, commonly known as the "Tucker act," and report herewith a resolution to that effect and recommend its passage.

DAVID RYAN.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SMITH, of Illinois, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 3804.]

The Committee on Claims, to whom was referred the bill (H. R. 3804) for the relief of David Ryan, having had the same under consideration submit the following report:

The bill covers a claim to the amount of \$3,000 for extra work by the claimant upon the National Cemetery road at Springfield, Mo. The facts are complicated; but after a careful examination of all the evidence presented, your committee is fully satisfied that the case is such as, in justice to the claimant, entitles him to a judicial investigation.

Your committee therefore recommend the passage of the bill referring the case to the Court of Claims for judicial determination.



HOT SPRINGS MOUNTAIN RESERVATION.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SMITH, of Illinois, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 2391.]

The Committee on Claims, to whom was referred the bill (H. R. 2391) authorizing and directing the Secretary of the Interior to examine certain claims of persons who owned or occupied buildings on the Hot Springs Mountain Reservation, which had been condemned by the Hot Springs Commission and afterwards burned, and to fix a reasonable value for each of said buildings from the evidence now on file in the Interior Department, have had the same under consideration, and after having given all the facts, circumstances, and evidence presented a full and thorough investigation report the same back with the recommendation that it do pass.

The facts are as follows:

On June 11, 1870, Congress passed a law entitled "An act in relation to the Hot Springs Reservation in Arkansas." Afterward, on March 3, 1877, this act was altered and largely amended. By the last act the Commissioners appointed under it commenced their labors about the 28th day of March, 1877, and the first thing that demanded their attention was the laying off of the Hot Springs Mountain Reservation.

Section 4 of the law of March 3, 1870, was as follows:

That before making any subdivision of said lands, as described in the preceding section, it shall be the duty of said Board of Commissioners, under the direction and subject to the approval of the Secretary of the Interior, to designate a tract of land included in one boundary sufficient in extent to include, and which shall include, all the hot or warm springs situated on the lands aforesaid, to embrace, as nearly as may be, what is known as Hot Springs Mountain, and the same is hereby reserved from sale, and shall remain under charge of a superintendent to be appointed by the Secretary of the Interior.

Under this section the Hot Springs Commissioners had surveyed a tract of land including all the hot or warm springs, and embracing Hot Springs Mountain, containing about 265 acres. A map of the same was made and forwarded to the Secretary of the Interior, and the designation was by him approved.

Section 7 of the same law reads as follows:

That said Commissioners shall have power to remove, or cause to be removed, all buildings or obstructions upon said Hot Springs Reservation, when the same may be necessary to carry out the provisions of this act, as also all obstructions to streets, alleys, or roads to be laid off, straightened, or widened, as herein provided for.

Section 8 reads as follows:

That the Commissioners shall have power to straighten or widen any of the streets or alleys in the town of Hot Springs, and to lay off such additional streets, alleys, and roads in said Hot Springs Reservation, or in the town, before the sale or disposition

of any of the property herein mentioned, as the convenience of the public and the interest of the United States may require, and for that purpose may condemn all buildings that they may find necessary to condemn, in order to straighten or widen said streets and alleys, and to lay off new streets, alleys, and roads, and also all buildings or improvements on the reservation made, and to fix the value on all property thus condemned.

The following extracts are taken from the record of the Hot Springs Commission, now in the Interior Department:

Saturday, June 30, 1877. The Commission met at 9 o'clock. Present, Messrs. Cragin and Stearns. It was ordered that all buildings or improvements situated on the Hot Springs Mountain reservation, lately designated by the Commissioners and approved by the Secretary of the Interior, be, and the same are hereby, condemned. Further, that the engineer be, and is hereby, instructed to cause an inventory to be made of all buildings situated in whole or in part on said reservation, giving the size of each as nearly as may be, by whom occupied, and for what purpose occupied, by a plan showing the location of each building and designated by numbers on said plat.

Monday, September 24, 1877. The Commission met at 9 o'clock. Present, Messrs. Stearns and Coburn. It was ordered that the clerk advertise in each of the two daily newspapers of Hot Springs the following notice:

"Buildings located in whole or in part on the Hot Springs Mountain reservation having been condemned to the Government, the Commissioners will proceed at once to assess the value of the same. All persons claiming ownership of said buildings are requested to put in their claims without delay, giving description of improvements and date and cost of construction."

Soon after this notice, and in accordance with the same, petitions were filed by the owners of the condemned buildings on the Hot Springs Mountain reservation before the Commissioners, and evidence was offered by the claimants touching the value of said condemned buildings, which evidence was fully taken down by stenographers and written out, and the same is now on file, with the petitions, in the Interior Department.

The Commissioners were very busy taking testimony in other cases which continued for many months, and they were not able immediately to consider the evidence taken in the cases of the condemned buildings on the Hot Springs Mountain reservation and to fix the value of said buildings. On the 5th day of March, 1878, a disastrous fire occurred in the city of Hot Springs, which consumed a large number of buildings on the Hot Springs Mountain reservation, and a considerable number of those on the east side of Valley street, included in said reservation, which had been condemned by the order of the said Commission. A portion of the condemned buildings on said reservation were not burned.

Some time after the Commission considered the evidence in the cases of the condemned buildings on said mountain reservation which were not burned, and issued certificates to the owners for the value thereof, as fixed by them. In relation to the condemned buildings on said reservation that were burned, a majority of the Commission decided, although the evidence of value had been taken and received by them, that it would not be proper for them to fix the value and issue certificates; therefore, although they all agreed that the owners of said buildings had superior equities, for the reason that they not only lost the privilege of purchasing the valuable land upon which said buildings stood, the same having been taken into the Hot Springs Mountain reservation without compensation, but by the fire they were also liable to lose the value of the buildings which had previously been condemned. The said Commission agreed that in their final report they would recommend that the Secretary of the Interior lay the matter before Congress and urge favorable action for the relief of the owners of the condemned

buildings on said reservation which had been destroyed by fire, and they did so recommend.

The Commissioners issued one hundred and seventy-two certificates for condemned buildings, including fifteen or twenty upon the Mountain reservation, which had not been burned, and the amount covered by them was \$74,696.

By the act of June 16, 1880, amending the above said acts, these certificates were provided for by section 2, as follows:

That the certificates (except certificate No. 162, issued to Samuel H. Stitt, De Witt C. Rugg, and Samuel W. Fordyce, for \$22,000, which exemption shall not prejudice the rights of the United States or the holders of said certificates), issued for condemned buildings by said Commissioners, be made receivable for the amounts named therein as so many dollars lawful money of the United States in the entry and purchase of the lands that may be sold in Hot Springs reservation, and that such certificates be assignable, and when assigned in the presence of two subscribing witnesses, or the execution of the assignment thereof shall have been acknowledged before a court of record or clerk thereof, the land officers in like manner shall receive them from the assignee in payment of lands purchased by himself or others.

By the act of March 3, 1877, the Commissioners were not only given power to condemn buildings for the purposes specified in said act, but they were also empowered to remove said buildings or to cause them to be removed. In most cases the buildings could not be removed advantageously, and they were therefore sold at auction to be torn down, the old material being of comparatively small value. In some cases the Commissioners employed men and had the buildings torn down and the materials removed. The removal of the buildings referred to by fire saved the Commissioners the trouble of removing the same, which otherwise they would have been compelled to do. That the owners of these condemned buildings had an equitable right to payment for the same the Commissioners had no doubt, and in their final report to the Secretary of the Interior may be found, on page 5, the following:

Situated upon Valley street, upon Hot Springs Mountain reservation, there was a large number of houses which had been condemned in a general order on June 30, 1877.

This order was practically annulled by subsequent action of the Commission, they having decided that a special condemnation and removal should be had on each petition: Testimony had been taken as to their ownership and value prior to their destruction, which is preserved with the petitions on file. These buildings were not specially condemned because of the constant occupation of the Commission in taking testimony before and up to the time of the fire. Had these buildings remained they would have been condemned, and certificates for their value issued, but being burned, the Commissioners held it not to be within their power to issue certificates for them. Their action in these cases is a matter of record, wherein it appears that the claims for the value of these buildings were rejected for the sole reason that they were burned. The attention of the Secretary of the Interior and of Congress is invited to the testimony and the record in these cases, and your committee believe the bill under consideration is proper legislation and will give to the sufferers by the fire, who owned these buildings, compensation for their losses.

The chairman of the Commission did not concur with his colleagues that it was not proper for the Commission to issue certificates for the condemned buildings which had been burned, when, by order of the Commission, the claims had been filed and proof taken. He favored issuing certificates as in other cases. He held that these buildings had been legally and fully condemned, and proof taken upon which value could be fixed, but the other two commissioners thought the cer-

tificates could not properly be issued, because the buildings had been burned before the value had been actually fixed by the Commission. These buildings were condemned for the public good, and upon all principles of equity and justice the owners were and are entitled to payment for the same.

These buildings were all in the possession of the United States prior to the time when the Commissioners commenced their labors, and were rented by the receiver, generally, if not in all cases, to the parties who claimed their value as condemned buildings. The rent paid was turned into the Treasury by the receiver. The receiver's duties terminated by the act creating the Commission, and thereafter the Commission practically had control and possession of the property, though no rent was exacted during the process of settlement under the law. The theory of the law was that those who were awarded the right to purchase the land, by reason of occupancy and improvement, should pay the appraised value of the land, but they were not to pay anything for the improvements, which were regarded as their own property.

Equity demands that the persons owning houses, stores, etc., on the east side of Valley street, which had been embraced in the Mountain reservation, and which had been condemned for the public good and burned before the value was fixed, should be paid a reasonable value therefor.

The number of parties interested in these claims is less than thirty. Their petitions, as presented before the Hot Springs Commission, are all numbered and on file in the Interior Department, with the evidence of value taken in each case. Your committee believes that a fair value for all the condemned burned buildings, where certificates were not issued by the Commissioners, would be about \$40,000.

The Hot Springs Hotel was the most valuable building in this category, and was valued at about \$15,000. Most of the other buildings were comparatively of small value, but in many cases they constituted the entire property of the owners.

As the evidence is very voluminous and all on file in the office of the Secretary of the Interior, your committee does not print it here, for the reason, that the pending bill leaves the ascertainment of the values, where it is proven, of the houses destroyed, to the Secretary, from said evidence, and if not proven to his reasonable satisfaction, he need not pay.

Your committee, therefore, recommend that the bill do pass.



HEIRS OF PHILIP C. ROWE.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 8318.]

The Committee on Claims, to whom was referred the bill (H. R. 8318) for the relief of the heirs of Philip C. Rowe, submit the following report:

In the year 1865 the original claimant in this case, Philip C. Rowe, invented an improvement in pistons for pumps, for which letters patent were issued the 6th day of June, 1865, and numbered 48098.

During the life of the patent eighty-eight pumps were made at the Charlestown navy-yard containing the invention of Rowe and applied to the vessels of the United States, and upon an understanding on the part of Rowe that the Government would make him a reasonable compensation. No compensation has been made, and during his life he commenced a suit in the Court of Claims under the act known as the Bowman act. The facts found by the court are reported in Mis. Doc. No. 125 of the Fiftieth Congress, second session. Those findings sustain the statements of fact already made, and they justify the conclusion that the Government was benefited by the use of Rowe's invention in the sum of \$13,200.

The committee are unanimous in the opinion that the heirs of Rowe should receive the compensation to which he was entitled, and they recommend the passage of the bill with an amendment striking out "thirteen," in line 5 of said bill, and inserting in lieu thereof the word "eight," and that as amended said bill do pass, making an appropriation of \$8,000.

HEIRS OF JACOB R. DAVIS.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 5380.]

The Committee on Claims, to whom was referred the bill (H. R. 5380) for the relief of the heirs of Jacob R. Davis, having had the same under consideration submit the following report:

Your committee upon investigation find that the facts in this case are substantially as follows:

It appears from the evidence in this case that the said Jacob R. Davis was appointed, on the 26th of December, 1865, agent of the Freedmen's Bureau for Richmond County, Ga., and that he immediately entered upon the discharge of the duties of the office. The compensation allowed him was the fees usually allowed to the civil magistrate by the laws of the State of Georgia for similar services; and the testimony shows that he received compensation in this way up to the 1st of June, 1866, and that he paid over to the Department a considerable surplus in the way of fees, etc., which he had collected, after deducting therefrom his salary and clerk hire and other incidental expenses. About the 1st of June, 1866, the Department rescinded the order for his compensation from fees, but he was directed to continue to discharge the duties of the office of agent of the Freedmen's Bureau, from the 1st of June, 1866, to the 1st of June, 1867, for which he has received no compensation whatever. On the 1st of June, 1867, he was commissioned by the Department with a salary at the rate of \$125 per month, and he continued in office, receiving this salary, until April, 1868.

The evidence before the committee shows that during the whole time Mr. Davis had discharged the duties of the office in an able and efficient manner, and that he gave satisfaction both to the freedmen and their employers. The discharge of the duties of the office occupied the whole of his time.

The reason assigned by Gen. Howard why he was not paid for the period from June 1, 1866, to June 1, 1867, was that there was no law appropriating that amount from the Treasury. If it was necessary to continue him in office from the 1st of June, 1867, to April, 1868, at a salary of \$125 per month, it follows then with as much reason and justice that he be paid at the same rate for services rendered for the twelve months immediately preceding.

Therefore it is recommended that the accompanying joint resolution be adopted.

We append as exhibits to this report the statements of John Mil-

lidge, late United States attorney; of the claimant; of Joshua Hill, late United States Senator, whose nephew acted as claimant's clerk during a portion of the time in which the services claimed for were rendered; of Capt. George R. Walbridge; of C. F. Watson, and of Gen. O. O. Howard, which appear to be conclusive evidence of the justice of the claim.

We therefore report the bill favorably.

WASHINGTON CITY, May 2, 1872.

GENTLEMEN: My claim is for services rendered as agent of the Freedmen's Bureau office at Augusta, Georgia, for one year commencing June 1st, 1866, up to June 1st, 1867. I was appointed by Gen'l Tillson, then Commissioner for the State of Georgia, Dec. 26, 1865. The compensation allowed me was the fees usually allowed to civil magistrates by the laws of the State of Georgia for similar services. This continued up to June 1st, 1866, at which time the Commissioner directed me to turn all litigated cases over to the State courts, at the same time to keep a supervision of all claims which freedmen were interested in, and see that they were justly dealt by. This, while it cut off all compensation, by no means lessened my duties; in fact, making them additionally unpleasant. Up to June 1st, '66, I had run the office without expense to the Dep't and paid the balance, some hundreds of dollars, over to the paymaster of the Freedmen's Bureau, which receipt was before the last named committee, and should be among their papers. This change was made in my portion of the State as an experiment, to see if the civil courts would do the freedmen justice, while a similar order was not issued for the balance of the State until November 1st, 1866. Agents occupying similar duties to my own, though less important, as soon as they were notified of the change, signified their intention to resign, not being willing to serve without compensation, were at once placed upon the pay roll at 125 dollars per month without loss of time. I served nearly a year in this way until the acting adjutant gen'l, Lut. Pickert, and Cap. Geo. R. Walbridge, inspector gen'l, brought the matter to the notice of Gen'l Howard, who at once placed me upon the pay roll at 125 dol. per month; my duties were by no means changed. The adjutant and inspector gen'l intended that my commission should have been dated back to June 1st, 1866, instead of June 1, 1867. Gen'l Howard stated to the two House committees that I was a faithful officer; my duties were important to the Govern't; that in justice I should be paid, and recommended my being paid, and further stated that had I applied, as others did when the perquisites were cut off, that he would have commis'ed me at once, as he did as soon as he was informed I was acting without pay, or was not upon the pay roll.

The Hon. Joshua Hill, Senator from Georgia and resident of the Congressional dist. in which I served, is knowing to my being the agent for the time named, as one of his nephews was my clerk a portion of the time.

I respectfully ask that you investigate my claim without delay, that it may be acted upon this session, as my pecuniary circumstances are such that if delayed to another session would seriously incommode me.

I am, gentle'n, resp'y, your obe'nt serv't,

JACOB R. DAVIS.

Hon. T. O. HOWE,
Chairman Committee on Claims.

I testify to the faithful and efficient service of Mr. Davis, it coming within my personal knowledge. I was familiar with Mr. D., and had recommended him to the authorities. He was very diligent and useful in his position.

JOSHUA HILL.

WASHINGTON, D. C., May 3, 1872.

I most cheerfully endorse Mr. J. R. Davis as one of the most active, honest, and thorough agents of the bureau in the State of Ga. I was on duty in that State as acting insp. gen'l and act'g commissary of subsistence for Dist. of Georgia from June, '66, to Sept., '67. My duties required me to visit and inspect all the districts and agencies of the bureau in the State, and Mr. Davis was the only recognized agent for the Augusta district during the period for which he claims in the within petition.

My orders from Gen'l Tillson's and Gen'l Sibley's head'qts always directed me to apply to Mr. Davis, agent of bureau, for any information or assistance I might need in the freedman's affairs while in that dist.

I often reported the fact at head qts. of Genl. Tillson that Mr. Davis had not rec'd his appointment, and each time it was promised it would be forwarded at once, which was finally done; but, through the oversight of the adjt. gen'l (Lient. Eugene Pickett), the appointment was dated June 1, 1867 (instead of '66). He (the adjt. gen'l) then promised to return it to Gen'l Howard and have it antedated, but this Gen'l Howard said he had no authority to do, but said the claim was just and equitable. * * * Mr. Davis, in addition to his duties as agent aided me materially in the distribution of supplies in spring of '67. His agency was one of the most important in the State and Mr. D. one of the most faithful known to the department.

GEO. R. WALBRIDGE,

Late Capt. and Act. Insp. Gen'l, and Commiss'y Sub. Dist. of Georgia.

GEORGIA, *Monroe County:*

Personally appeared before me, Jesse Aycock, a justice of the peace in and for the county and State aforesaid, John Millidge, who, being duly sworn, says that he knows Jacob R. Davis, and that said Davis was the agent for the Freeman's Bureau in the city of Augusta, Ga., during the years 1866 and 1867, and that he was recognized by the heads of said bureau as such agent; that said Davis' time was fully occupied by attending to the duties of said office; that he had frequently to visit the adjoining counties of Burke, Lincoln, Columbia, Warren in arranging and settling difficulties between freedmen and their employers, and seeing that they were properly represented in the courts where the freemen had to go to attend their trials; and every species of business connected with the defence of freedmen, in seeing that they had their rights; was very zealous, guarded, and looked after by said Davis, which brought upon him often the ill-will of many persons and made him unpopular. This department of the Government could not have had a more faithful and trustworthy officer, and he deserves liberal compensation.

JNO. MILLIDGE,
Late U. S. Attorney.

Subscribed before me this, the 28th Dece'r, 1871.

JESSE AYCOCK, *J. P.*

WASHINGTON, D. C., *Feb'y 18, 1870.*

I certify that Jacob R. Davis was an agent of the Bureau of Refugees, Freedmen, & A. L., at Augusta, Georgia, from December 25th, 1865, to June 1, 1867, under an appointment of Brig. Gen. Davis Tillson, Ass't Comm'r, without salary, and a portion of this time, how much I am unable to state, no fees or emoluments were attached to his office.

C. T. WATSON,
Late Disb'g Officer, Bureau R., F. & A. L., for Georgia.

WASHINGTON CITY, *District of Columbia:*

Personally appeared before me, a United States commissioner for the District of Columbia, Jacob R. Davis, who, after being duly sworn, says he was appointed Dec. 25, 1865, by Brig. Gen'l Davis Tillson, Asst. Commissioner, agent of the Bureau of Refugees, Freedmen, and Abandoned Lands, at Augusta, Georgia; that he served faithfully as such up to June 1, 1867; that from the date of his appointment, up to June 1, 1866, he was compensated for his services by fees; at this date, in obedience to instructions from Gen'l Tillson, such cases as fees were attached to were turned over to the civil authorities; that by this change, while it lessened his duties but little, if any, his compensation was entirely cut off; that he continued on duty up to June 1, 1867, being one year without receiving any compensation; that he continued on duty with the full expectation of being paid by the Government.

JACOB R. DAVIS.

Sworn to and subscribed before me this 18th day of February, 1870.

[SEAL.]

EDW. F. BROWN,
United States Commissioner.

To the Committee on Claims of the United States Senate:

GENTLEMEN: I have been requested by Jacob R. Davis, esq., to make a statement to your honorable body in reference to his claim, now pending before you, for services rendered as agent of the Freedmen's Bureau in Georgia, from June 1, 1866, to June 1, 1867.

Mr. Davis was appointed agent of the Bureau on the 6th day of Dec., 1865, and before him were tried all cases which arose between the white and colored people. The compensations allowed him at that time was the same fees allowed to civil magistrates by the laws of Georgia. He received compensation in this way up to the 1st of June, 1866, and paid over to the Department a considerable surplus in the way of fees, etc., which he had collected. On the 1st of June, 1866, as an experiment, all cases arising between white and colored persons were turned over to the civil magistrates, and Mr. Davis was required to keep a supervision over them. On the first of June, 1867, Mr. Davis was commissioned by this Department, at a salary of one hundred and twenty-five dollars a month, which salary he received to April, 1868.

During the entire time of Mr. Davis's connection with the Bureau, he discharged the duties of his office in an able and efficient manner and gave satisfaction to the freedmen and their employers.

Had Mr. Davis applied to this office for a commission, with salary, on the 1st of June, 1866, the same would have been issued, as he rendered valuable service to the Government. This application he neglected to make until June, 1867, when his commission, with salary of one hundred and twenty-five dollars per month, was issued.

Under the present law of Congress I had no authority to pay this claim from any public funds at my disposal.

I know Mr. Davis has been a good agent and has done the Government valuable service. I would, therefore, recommend that he be paid for his services from June 1, 1866, to June 1, 1867, as claimed.

O. O. HOWARD,

Brig. Gen., U. S. A., late Commissioner Bureau R., F., and A. L.

WASHINGTON, D. C., July 10, 1872.



JOSEPH C. HOGAN.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1441.]

The Committee on Claims, to whom was referred the bill (H. R. 1441) for the relief of Joseph C. Hogan, having considered the same, submit the following report:

Under advertisement of November 1, 1877, Joseph C. Hogan was awarded a contract for carrying the mails on route 46185 for weekly service at the annual rate of \$388. One L. R. Prescott also made a bid on said route for weekly service at \$400; and also another bid for tri-weekly service at \$600. Triweekly service was doubtless needed on the route and such service had been performed thereon for some ten consecutive years next preceding.

The service appears to have been improperly reduced to weekly service under said advertisement. Hogan, however, made the lowest bid for weekly service, and the award was, March 30, 1878, made to him. He subsequently executed a contract that was received at the Department as being in due form. Said contract was signed by Hogan, sureties, and the Postmaster-General, with his seal of office attached, and stated that "J. C. Hogan has been accepted according to law as contractor."

In said contract the Postmaster-General also obligated to "allow a pro rata increase of compensation for any additional service thereby required." Section 593, Postal Laws and Regulations, reads as follows:

Bidders should first propose for service strictly according to the advertisement, and then, if they desire, separately for different service, and, if the regular bid be the lowest offered for the advertised service, the other propositions may be considered.

Hogan, therefore, was entitled to the weekly service, or to any additional service that might be required.

By reason of undue pressure that was brought to bear against Second Assistant Postmaster-General Brady, he, in about seven weeks after said contract had been awarded Hogan, revoked the same, and ordered that a contract for triweekly service be made with Prescott at the sum proposed in his triweekly bid of \$600. Brady here made a second infraction of law by ordering a contract for service that had not been advertised for.

The confusion arising from such irregular transaction was such as to cause material loss on two other contracts of Hogan, namely, 46186

and 46188 (he was awarded four contracts in all), that culminated in his failure on the two contracts above cited.

Suit was eventually brought by Sixth Auditor McGrew for the recovery of \$3,400, this sum aggregating the sum of the two bonds of the bids on which Hogan failed. It is shown that he was not permitted to compromise the suit on any reasonable terms, and the lawsuit thus continued for some two and one-half years, very greatly to the prejudice and loss in business interests of Hogan and his sureties. At length the judge of the Federal court at Greensboro, N. C., took the matter in hand and gave judgment against Hogan and his sureties in the sum of \$500, and costs that aggregated nearly \$600.

It is claimed that the consequential damages resulting from the revocation of Hogan's contract, consisting of the trouble, worry, and total destruction of important business interests, were far greater than would appear to be possible from the revocation of so small a contract.

It is claimed, however, that the revocation of this contract was but the missile that inflicted the greater damage.

It has been satisfactorily shown that there was a connection between the contract that was discontinued (46185) and the two upon which Hogan subsequently failed, and that but for the revocation of his contract on said route there would have been no failure on the other two routes.

Brady's act in revoking Hogan's contract and ordering that a contract be made with Prescott for service on the same route, in lieu of Hogan, was, under the circumstances, a clear case of malfeasance in office, and under very aggravating circumstances, as Hogan stood ready to carry out the terms of his contract in every essential particular. More than this, it does not appear that any cause for complaint existed against Hogan, and therefore Brady had no proper excuse for taking his contract from him and giving it to Prescott.

The total cost to the Post-Office Department in consequence of Hogan's failure on routes 46186 and 46188 appears to have been \$3,199.13. Of this amount the Department saved by contracting with Prescott for triweekly service instead of increasing Hogan's service and allowing a pro rata increase of compensation, \$2,256.

The loss to the Department may be set down at \$943.13 (\$3,199.13—\$2,256=\$943.13). The foregoing facts are all supported by the exhibits hereto annexed and made a part of this report. The following has been submitted as some of the items of Hogan's losses:

(1) Direct loss accruing from revocation of his contract on route No. 46185..	\$1,456
(This is on the supposition that the service would have been increased to triweekly at a prorata increase of pay ($\$388 \times 3 = \$1,164$), for yearly service; $\$1,164 \times 4 = \$4,656$, the compensation for four years. The contract had been sublet at \$800 per annum for triweekly service, $\$800 \times 4 = \$3,200$ compensation for four years; consequently $\$4,656 - \$3,200 = \$1,456$, the profit expected.)	
(2) Cost of round trip of the agent of Hogan, in April, 1881, including damage to business, believed to be	600
(3) Cost of trip of said agent from California east in September, 1881.....	75
(4) Cost of taking testimony of L. R. Prescott and Bryan Tyson, the agent of Hogan, in California, and including lawyer's fee.....	70
(5) Paid two lawyers	460
(6) Cost of taking the testimony of John L. French and W. M. Turner at Washington, D. C	20
(7) Cost of five round trips of said agent from Washington, D. C., to Greensboro, N. C., about \$30 each	150
(8) Loss of time and the destruction of business interests of Bryan Tyson, the agent of Hogan, and of Hogan's sureties, including various items of expense, for two and a half years, at \$1,500 per year (for ten years next preceding the income of said agent and surety averaged more than \$1,500 per year).....	4,500

(9) Cost of final judgment and including cost of suit.....	\$590
(10) Paid Warren Green for three months' service on route 46188, in addition to contract pay.....	125

Total cost of Brady's revocation of contract 46185 8,046

(Many small items of expense and much damage from the destruction of important business interests are not included in the above.)

It is claimed that by reason of Hogan and sureties being poor men the damages resulting from a revocation of Hogan's contract were far greater than they otherwise would have been, as they were deprived of capital that was imperatively needed for other purposes, to say nothing of the complete destruction of important business interests, at least for the time being, the revenue from which, it is believed, under more favorable circumstances, would have amounted to far more than the sum now claimed.

Certain it is that a contractor of record should be protected in the rights that pertain to him as a contractor. Therefore, if a legal contractor be illegally deposed, greatly to his prejudice and injury, as has been shown was the case with Hogan, and a party, who had no right to any service as against Hogan, be installed as contractor in lieu thereof, an award, in a reasonable and just sum, should be made the legal contractor of record as an indemnification for the loss he may have sustained.

Your committee believe that Hogan would not be entitled to recover for loss to business of his agent, Tyson, as charged in items Nos. 1 and 8 of his bill. They therefore reduce item No. 1 to \$75, and strike out item No. 8, leaving the balance of \$3,021, and recommend that the said bill (H. R. 1441) be amended by striking out in line 4 the words "eight thousand and forty-six" and inserting in lieu thereof the words "three thousand and twenty-one," and that the bill as amended do pass.

POST-OFFICE DEPARTMENT,
Washington, D. C., October 2, 1883.

I certify that the annexed are true copies taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed the day and year above written.

[SEAL.]

W. Q. GRESHAM,
Postmaster-General.

WASHINGTON, D. C., May 6, 1878.

SIR: I have the honor to herewith present a petition praying for the increase of mail service on route 46185, Nevada City to Washington, to three trips per week, from the 1st of July next. The petitioners, all except P. M. at Nevada City, reside, as I am creditably informed, in the immediate vicinity of Omega and Washington, and having for the past ten years had a tri-weekly mail, I trust the petition will be favorably considered.

I am, very respectfully, your obedient servant,

BRYAN TYSON.

Hon. THOS. J. BRADY,
Second Ass't P. M. Gen'l.

The SECOND ASSISTANT P. M. GENERAL:

SIR: We, the undersigned petitioners, would respectfully request that the mail service on route No. 46185, from Nevada City, Nevada Co., California, via Omega, to Washington, Nevada Co., California, be increased from one per week to three times.

Your petitioners represent that the section of country accommodated by said mail route have no mail facilities other than that afforded by said route. Being at the end of the route their business is of that character that early and frequent communication is a necessity. The amount of mail received on that route is of considerable bulk, and their location is such that in winter the snows fall to such depth that the mail must be served on snow shoes, and if only served once per week it would be impossible for one man to carry it, thereby causing delay and great inconvenience.

The community have for ten years last past been served three times per week, and it is deemed by them a great hardship to have the service reduced.

And your petitioners will ever pray, etc.

WASHINGTON, *April 1st, 1878.*

(This petition is signed by one hundred and fifty-two names.)

POST-OFFICE DEPARTMENT,
Washington, D. C., February 6th, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department.

In testimony whereof I have hereto set my hand, and caused the seal of the Post-Office Department to be affixed, the day and year above written.

[SEAL.]

W. Q. GRESHAM,
Postmaster-General.

MAY 17, 1878.

L. R. PRESCOTT,
Omega, Cala.

Contract ordered on route 46185, Nevada City by Omega to Washington, 21 miles, and back 3 t. a. w., from July 1, 1878, to June 30, 1882.

P. M., Nevada City, Cala., notified.

P. M., Washington, Cala., do.

J. L. FRENCH.

U. S. POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., ———, 188—.

SIR: The Postmaster-General has ordered that a contract be made with you for carrying the mail from ———, ———, 188—, to ———, ———, 188—, on route No. ——— between ——— and ———, ——— times a week each way, for the sum of \$—— per annum.

Blank contracts will be sent to the postmaster at your place of residence, to be executed by yourself and sureties, in due time; but the service must be begun on the date first named, or the next mail-day thereafter, whether the contracts be executed or not.

Respectfully, etc.,

—————,
Second Assistant Postmaster-General.

Mr. ———
—————
—————

[Acceptance.]

U. S. POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL,
Washington, D. C., March 5, 1884.

SIR: The Postmaster-General has accepted your proposal, under advertisement of October 15, 1883, for conveying the United States mail from July 1, 1884, to June 30, 1888, on Georgia Route No. ———, between ——— and ———, at \$—— a year, "with celerity, certainty, and security."

Contracts will be sent in due time to the postmaster at your place of residence,

which you must execute at once, and file in the Department by the 17th day of May, 1884; otherwise you will be considered a failing bidder, and the service will be re-let at your expense.

You will request the postmaster at the beginning and end of the route to inform this office when you make the first trip.

For notice to accepted bidders see inside.

Very respectfully,

Second Assistant Postmaster-General.

Mr. _____

Recorded and sent March 5, 1884.

NOTICE TO ACCEPTED BIDDERS.

In sending the accompanying acceptance of our proposal for mail service, the Postmaster-General directs that distinct information be given you on the following points:

Contractors and carriers, including persons to whom routes may be sub-let by a contractor, are required to take the oath prescribed by the acts of Congress for the purpose. The law provides that the oath shall be taken prior to beginning service, and that no payment be made until it shall have been placed on file in the Department.

Although the contract term is from the first of July next, contractors will not then begin the service unless there are postmasters appointed and commissioned at both ends of the route, except in cases where the route ends at a railroad station where there is no post-office. This requirement is important to contractors, as they can not be paid without the register or certificate of such postmasters, showing the performance of service.

Contractors may aid in having post-offices opened at intermediate points, or where they formerly existed, by informing the inhabitants that applications addressed to the First Assistant Postmaster-General, naming a suitable person for postmaster who is over 21 years of age, will receive attention.

Contractors are requested to urge upon postmasters at schedule points the necessity of reporting service at the end of each month by "register," in order that payments for service performed may be promptly made quarterly, within the time named in the contract.

You will acknowledge the receipt of this acceptance, and say if you intend to carry the mail in person, or by a carrier or agent. Inform the postmasters at the beginning and end of the route, in writing, of your intentions in this respect, and give the names of the carriers or agents to be employed, if any.

If you call for the mail in person the first of July, or the first-mail day, take this acceptance with you and show it to the postmasters; also have with you the magistrate's certificate that you have taken the oath required by law.

If you employ a carrier, give him an order on the postmaster for the mail, and see that he, also, is provided with evidence of having been sworn.

R. A. ELMER,
Second Assistant P. M. General.

(Indorsed:) With the exceptions of dates this is substantially a copy of the circular letter that was sent Hogan informing him that his proposal for route 46185 had been accepted.

The following is a copy from a certified copy of the testimony of the Hon. J. L. French, taken before me as U. S. Commissioner on the 24th day of March, A. D. 1882:

Question 7. Why was said award and contract, made as you have testified, with Hogan, annulled and rescinded, and under what circumstances, and at whose instance?

In answer to the seventh question he says: Some time after the award to Hogan, and his execution of the contract for said service, it was represented to the Department and urged personally by Senator A. A. Sargent, of California, that three times a week service was necessary, and as a Mr. Prescott had made a proposal for three times a week service, which was less in amount than the bid of Hogan, if increased *pro rata* for three times a week service, Senator Sargent urged that award to Hogan should be rescinded and contract made with Prescott for the service.

Question 13. By what authority, at whose instance, and for what purpose, was the

Hogan contract annulled, after the same had been accepted and the route awarded to him?

In answer to the thirteenth question he says: By the authority of the Second Assistant Postmaster-General. The official order making the change, although signed by myself as Acting Second Assistant Postmaster-General, was so signed upon the order of the Second Assistant Postmaster-General, Thomas J. Brady, and it was done at the instance of U. S. Senator Sargent, as before stated. The Hogan contract was annulled for the sole reason, so far as I know, that the acceptance of Prescott's proposal would effect a saving of money to the Department. The conference with Senator Sargent with regard to the change was between him and General Brady, a portion of it in my presence.

Question 14. Please state all you know with respect to the letting of the Hogan contract, the repudiation of the same, the letting thereafter to Prescott, and under whose influence the same was done; and whether or not, under the rules, custom, and regulations, of the Post-Office Department, the same is not without precedent, and contrary to the practice and laws of the Department?

(14th question objected to by U. S. as irrelevant and incompetent.)

In answer to the fourteenth question he says: All the knowledge I have with respect to the letting of the route to Hogan, the annulment of his contract and the letting thereafter to Prescott, has been given in my preceding answers.

The action taken in the case is, so far as I know, without precedent, and contrary to the practice and law of the Department.

This is to certify that I have carefully compared the foregoing extracts from the testimony of Hon. J. L. French, late chief clerk P. O. Dept., in the case of U. S. *vs.* Jos. C. Hogan and others, in the U. S. Circuit Court, North Carolina; and I believe the same to be true and accurate copies of the parts of testimony they purport to be.

S. C. MILLS, *Notary Public.*

FEB. 5th, '84.

CERTIFICATE TO ACCOUNT FOR AMOUNT OF ACTUAL DAMAGE.

OFFICE OF THE AUDITOR OF THE TREASURY FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office, of the account, for amount of actual damage to the United States, of Joseph C. Hogan, failing contractor on routes Nos. 46186 and 46188, in the State of California.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, District of Columbia, this fourteenth day of February, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.]

J. H. ELA,
Auditor.

STATEMENT OF ACCOUNT.

Joseph C. Hogan, failing contractor, in account with the United States.

DR.			CR.		
Route.			Route.		
46186	To collections, 4th qr., 1878....	\$149. 27	46186	By transportation from Oct. 1, 1878, to March 14, 1879, at \$1,750.00 per annum.	\$792. 36
"	" Rec. service of Warren Green from Dec. 3, 1878, to March 14, 1879, at \$3,100.00 per annum.	872. 90	46188	" Transportation from Oct. 1, 1878, to Feby. 28, 1879, at \$389.00 per annum.	161. 00
46188	" Collections, 4th qr., 1878....	98. 43		Balance	316. 11
"	" Rec. service of Warren Green from Dec. 1, 1878, to Feby. 28, 1879, at \$600.00 per annum.	148. 87			
		1, 269. 47			1, 269. 47
	To balance on general account.	316. 11			

Joseph C. Hogan, failing contractor, in account with the United States—Continued.

ACTUAL DAMAGE ACCOUNT.

DR.	CR.
Route.	
46186	To difference between pay of failing contr. and that of new contr. from Mch. 15, 1879, to June 30, 1882.
46188	" Difference between pay of failing contr. and that of new contr. from Mch. 1, 1879, to June 30, 1882.
	\$2,612.80
	270.22
	<u>2,883.02</u>
	To balance on actual damage account.
	<u>2,883.02</u>
	To balance on general damage account.
	316.11
	<u>3,199.13</u>
	To balance due U. S.
	<u>3,199.13</u>
	By balance \$2,883.02
	<u>2,883.02</u>
	By balance 3,199.13
	<u>3,199.13</u>

OFFICE OF THE AUDITOR OF THE TREASURY,
FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., Feb'y 14, 1884.

J. H. ELA,
Auditor.

BRYAN TYSON, ESQ.,
Washington, D. C.

FORM OF CERTIFICATE TO EVIDENCE OF DEMAND.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct copy of the original office circular No. 558 B, dated May 27, 1883, and certificate now on file in this office, of W. W. Holden, postmaster at Raleigh, in the State of North Carolina, pertaining to the accounts of Joseph C. Hogan, failing contractor, routes 46186 and 46188, in the office of the Sixth Auditor of the Treasury.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the City of Washington, this second day of October, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.]

J. H. ELA,
Auditor.

DEMAND ON LATE POSTMASTERS AND SURETIES PRIOR TO SUIT.

OFFICE OF THE AUDITOR OF THE TREASURY,
FOR THE POST-OFFICE DEPARTMENT,
COLLECTING DIVISION,
Washington, D. C., May 27th, 1880.

SIR: In reply to your letter of the 24th instant, I have to request that you will address Joseph C. Hogan, failing contractor at Durham, N. C., and William Mangum, James Tyson, and Bryan Tyson, also Durham, N. C., sureties of said failing contractor, demanding payment of draft No. 167, for \$3,400, being a balance due the United States from said failing contractor on his general postal account sent you for collection, and notify them that unless they respond to your demand within 30 days after such notice suit will be instituted against them in the United States Court for the recovery of the balance due from the said failing contractor. If suit is brought, interest will be collected from the date of the last charge in his account, together with costs of suit.

If they fail to pay the draft within the time named you will return it to this Office, and report, particularly, the result of your demand, and the present residence and pecuniary circumstances of the failing contractor, and his sureties on the annexed certificates.

Respectfully,

J. H. ELA,
Auditor.

WM. W. HOLDEN, Esq.,
P. M., Raleigh, N. C.

The tender of a reasonable sum will be entertained in compromise of this case. Your attention is particularly called to the following section of Regulations of 1879:

"SEC. 1197. If due diligence be not used in making the collection, or if, being unsuccessful, any postmaster fails to return the draft or demand to the Auditor, or otherwise to give notice of such failure, or fail to give any information required in relation to the same, such neglect and want of fidelity will amount to a breach of the condition of his bond, and the draft will be permanently charged to the general account of the postmaster holding it, and he and his sureties will be held responsible for the amount of the same."

REPORT AS TO THE RESIDENCE AND PECUNIARY CIRCUMSTANCES OF THE LATE
POSTMASTER AND HIS SURETIES.

POST-OFFICE, RALEIGH, N. C., *July 29, 1880.*

AUDITOR OF THE TREASURY FOR THE POST-OFFICE DEPARTMENT:

SIR: The residence and pecuniary circumstances of Joseph C. Hogan, failing contractor, and of William Mangum, James Tyson, and Bryan Tyson, his sureties, are as follows: Joseph C. Hogan, at Durham, North Carolina, William Mangum, Durham, North Carolina; James Tyson, Durham, North Carolina; Bryan Tyson, Gold Run, California. Letters from P. M. at Durham and from the sureties heretofore forwarded. Principal not thought to be worth much, but sureties considered good for the debt.

Respectfully,

W. W. HOLDEN,
Postmaster.

You will transmit, with this certificate, all letters received by you bearing on the above-required information, and communicate such other facts as you may deem important in the case.

POST-OFFICE, RALEIGH, N. C., *July 29, 1880.*

I, W. W. Holden, postmaster at Raleigh, N. C., employed by the Auditor of the Treasury for the Post-Office Department for that purpose, hereby certify that I made demand for payment of draft No. 167, for \$3,400, on Joseph C. Hogan, failing contractor, being the balance due the United States from him on his general postal account, as stated by letter mailed on the ——— day of ———, 188—, addressed to the said delinquent postmaster at ———, his last usual place of abode (*————); that a sufficient time has elapsed in the ordinary course of mail for said letter to have reached its destination and a reply to have been received; and that payment of said draft for said balance as aforesaid has not been received within the time designated in my instructions from the Auditor of the Treasury for the Post-Office Department, to wit: ——— days.

I further certify that I made demand for payment of said draft for the aforesaid balance upon said Hogan and his sureties on March 25, April 14, May 25, and June 28, 1880; the sureties of said late and delinquent postmaster, by letter mailed on the ——— day of ———, 188—, addressed to them at ———, and that the said draft has not been paid ———, their last usual place of abode; that a sufficient time has elapsed in the ordinary course of mail for said letters to have reached their destination and replies to have been received; and that payment of said draft for the aforesaid balance has not been received within the time designated in my said instructions from the Auditor of the Treasury for the Post-Office Department.

W. W. HOLDEN,
Postmaster.

* If his place of abode is not known, then mail to the post-office where the indebtedness accrued, and insert above, in place of "his last usual place of abode," the following words: "*the post-office where the indebtedness accrued.*"

DURHAM, N. C., *June 17, 1880.*

SIR: In response to your letter of the 27th ult., requiring the payment of \$3,400, or the naming of some reasonable sum as a basis for compromise, we wrote you some days since to know what would be the least you would compromise for and have not heard from you. We agree, rather than to be bothered with court, to pay \$500. Not that we think you can get judgment against us, but as honorable men. Under the circumstances we do not think really that you ought to exact anything from us. We are all hard working men, and what little we have we got by hard work and industry. Your taking our best route from us is the cause of all this trouble.

We are, very respectfully, your ob't serv'ts,

J. C. HOGAN, *Contractor.*
WM. MANGUM, *Surety.*
JAMES TYSON, *Surety.*
Per JAMES TYSON.

FORM OF CERTIFICATE.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct copy of the original letter of the Auditor of the Treasury for the Post-Office Department, dated June 26, 1880, addressed to James Tyson, Durham, North Carolina, pertaining to the accounts of J. C. Hogan, failing contractor on routes 46187 and 46188, in the State of California in the office of the Sixth Auditor of the Treasury.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this twenty-first day of October in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.]

J. H. ELA,
Auditor.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
Washington, June 26, 1880.

JAMES TYSON, Esq.,
Durham, N. C.:

SIR: The Hon. Postmaster-General has declined to accede to my recommendation for compromise of the liability of Joseph C. Hogan, failing contractor, upon the basis of \$500.00, as proposed by you in your letter of the 17th inst.

It, therefore, becomes my duty, under the law, to proceed with the collection of the penalty of \$3,400.00 adjudged against Mr. J. C. Hogan. I have to-day instructed the P. M. at Raleigh to make final demand upon said failing contractor, and upon you and your cosureties.

Respectfully,

J. M. MCGREW,
Auditor.

CERTIFICATE TO ACCOUNT FOR AMOUNT OF BOND.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office of the account, for amount of bond, of Joseph C. Hogan, failing contractor on routes No. 46186 and 46188, in the State of California.

In testimony whereof I have hereunto signed my name and caused to be affixed my seal of office at the city of Washington, District of Columbia, this fourteenth day of February, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.]

J. H. ELA,
Auditor.

STATEMENT OF ACCOUNT.

Joseph C. Hogan, failing contractor, in account with the United States.

Route.	Dr.	
46186	To amount of bond under advertisement of Nov. 1, 1877	\$3, 040. 00
46188	To amount of bond under advertisement of Nov. 1, 1877	400. 00
		3, 400. 00

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST OFFICE DEPARTMENT,

Washington, D. C., Feb'y 14, 1884.

J. W. ELA,
Auditor.

BRYAN TYSON, Esq.,
Washington, D. C.

POST-OFFICE DEPARTMENT,
Washington, D. C., January 25, 1884.

I certify that the annexed are true copies taken from the files and records of this Department.

In testimony whereof I have hereto set my hand, and caused the seal of the Post-Office Department to be affixed, the day and year above written.

[SEAL]

W. Q. GRESHAM,
Postmaster-General.

22156.

PROPOSAL.

The undersigned, Lynam Reed Prescott, whose post-office address is Omega, County of Nevada, State of California, proposes to carry the mails of the United States from July 1, 1878, to June 30, 1882, on Route No. 46185, between Nevada City and Washington, State of California, under the advertisement of the Postmaster-General, dated November 1, 1877, "with celerity, certainty, and security," for the sum of four hundred dollars per annum; and if this proposal is accepted he will enter into contract, with sureties to be approved by the Postmaster-General, within the time prescribed in said advertisement. Said mail to be carried once a week.

This proposal is made with full knowledge of the distance of the route, the weight of the mail to be carried, and all other particulars in reference to the route and service; and, also, after careful examination of the forms and instructions attached to said advertisement.

Dated January 21st, 1878.

L. R. PRESCOTT, *Bidder.*

[Oath required by section 245 of an act of Congress approved June 23, 1874, to be affixed to each bid for carrying the mail, and to be taken before an officer qualified to administer oaths.]

I, Lyman R. Prescott, of Omega, Cala., bidder for carrying the mail on route No. 46185, from Nevada City to Washington, do swear that I have the ability, pecuniarily, to fulfill my obligation as such bidder; that the bid is made in good faith, and with the intention to enter into contract and perform the service in case said bid shall be accepted.

L. R. PRESCOTT.

Sworn to and subscribed before me, a notary public for the County of Nevada, State of California, this 21st day of January, A. D. 1878, and in testimony thereof I hereunto subscribe my name and affix my official seal the day and year aforesaid.

[L. S.]

J. M. WALLING,
Notary Public.

NOTE.—When the oath is taken before a justice of the peace or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

Bids must be accompanied by a certified check, or draft, on some solvent national bank, payable to the order of the Postmaster-General, equal to 5 per centum on the present annual pay on the route when the present pay exceeds \$5,000; or in case of

new service, not less than 5 per centum of the amount of the bond accompanying the bid, if said bond exceeds \$5,000. When the same persons are sureties on more than one bond their unincumbered real estate must equal in value not less than one-fourth the aggregate of all the bonds on which they are sureties.

The proposal must be *signed* by the bidder or each of the bidders, and the date of signing affixed.

Direct to the "Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.," marked "Proposals, State of ———."

Proposals for different States must not be inclosed in the same envelope.

NOTE.—Any alteration, by erasure or interlineation of a material part of the following bond, will cause it to be rejected, unless it appears by a note or memorandum, attested by the witness, that the alteration was made before the bond was signed and sealed.

When partners are parties to the bond, the partnership name should not be used, but each partner should sign his individual name.

✍ Insert the names of the principal and sureties in full in the body of the bond; also the date. The signatures to the bond should be witnessed, and each signature must be opposite a separate seal.

BOND.

Know all men by these presents, that Lyman R. Prescott of Omega, Nevada County, in the State of California, principal, E. O. Tompkins and Charles Kent of Nevada County, in the State of California, as sureties, are held and firmly bound unto the United States of America in the just and full sum of four hundred dollars, lawful money of the United States, to be paid to the said United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 21st day of January, 1878.

Whereas, by an act of Congress approved June 23, 1874, entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy five, and for other purposes," it is provided: "that every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster," in pursuance whereof, and in compliance with the provisions of said law, this bond is made and executed, subject to all the terms, conditions, and remedies thereon in the said act provided and prescribed, to accompany the foregoing and annexed proposal of the said Lyman R. Prescott, bidder.

Now, the condition of the said obligation is such that if the said bidder, as aforesaid, shall, within such time after his bid is accepted as the Postmaster-General has prescribed in said advertisement, to wit, on or before the 1st day of June, 1878, enter into a contract with the United States of America, with good and sufficient sureties to be approved by the Postmaster-General, to perform the service proposed in his said bid, and further shall perform said service according to his contract: then this obligation shall be void, otherwise to be in full force and obligation in law.

In witness whereof we have hereunto set our hands and seals this 21st day of January, 1878.

L. R. PRESCOTT. [SEAL.]
E. O. TOMPKINS. [SEAL.]
CHAS. KENT. [SEAL.]

Witness:

GEO. E. TURNER.
J. M. WALLING.

Interrogatories.—The following interrogatories are prescribed by the Postmaster-General to be answered, under oath, by each of the sureties in the foregoing bond:

1. What amount in value of real estate is owned by you?
2. Of what description—town or city lots, improved or unimproved, or farming land, cultivated or uncultivated?
3. Where is it situated, and in what county and State does record-evidence of your title exist? (Answer on next page.)

OATH OF SURETIES.

STATE OF CALIFORNIA, *County of Nevada*, ss:

On this 21st day of January, 1878, personally appeared before me E. O. Tompkins and Charles Kent, sureties in the foregoing bond, to me known to be the persons

named in said bond as sureties, and who have executed the same as such, who, being by me duly sworn, dispose and say, and each for himself disposes and says, he has executed the within bond, that his place of residence is correctly stated therein, that he is the owner of real estate worth the sum hereinafter set against his name over and above all debts due and owing by him, and all judgments, mortgages, and executions against him after allowing all exemptions of every character whatever, the total sum thus assured amounting to (\$800) eight hundred dollars, being double the amount of the foregoing bond.

And in answer to the foregoing interrogatories each of the said sureties further deposes and says that the value, description and location of his real estate is as follows:

Name of sureties.	Value of real estate.	Description of real estate. (As required by interrogatory No. 2.)	Where located, and record-evidence of title.
E. O. Tompkins	\$1,920. 00	Situate in Washington Tp., Nev. Co., Cala., Township 17, N. R. 11, 6, farming lands.	In Nevada Co. Evidence of title in recorder's office in Nevada County.
Charles Kent	2,000. 00	Town lot in Nevada City, Cala.	Nevada City, recorder's office, said county.

E. O. TOMPKINS, \$400.
CHAS. KENT, \$400.

Subscribed and sworn before me this 21st day of January, 1878.

[L. S.]

J. M. WALLING,
Notary Public.

NOTE.—When the above oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a U. S. court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer. If the oath is taken before a notary public and his seal is affixed, the certificate of the clerk of the court is not necessary.

CERTIFICATE OF POSTMASTER.

I, the undersigned, postmaster at Nevada City, State of California, after the exercise of due diligence to inform myself of the pecuniary ability and responsibility of the principal and his sureties in the foregoing bond, and of the real estate owned by them respectively, do hereby approve said bond, and certify that, in my belief, the said sureties are sufficient—sufficient to insure the payment of double the entire amount of the said bond; and I do further certify that the said bond was duly signed by L. R. Prescott, bidder, and E. O. Tompkins and Chas. Kent, his sureties, before signing this certificate.

H. H. HASKINS,
Postmaster.

Dated January 21st, 1878.

Postmasters will observe that the improper approval of the bond, or the certificate of the sufficiency of sureties therein, exposes them not only to dismissal, but also to fine or imprisonment.

—
22,155.

PROPOSAL.

The undersigned, Lyman Reed Prescott, whose post-office address is Omega, county of Nevada, State of California, proposes to carry the mails of the United States from July 1, 1878, to June 30, 1882, on route No. 46185 between Nevada City and Washington, State of California, under the advertisement of the Postmaster-General, dated November 1, 1877, with "celerity, certainty, and security," for the sum of six hundred dollars per annum; and if this proposal is accepted he will enter into contract, with securities to be approved by the Postmaster-General, within the time prescribed in said advertisement. Said mail to be carried three times per week.

This proposal is made with full knowledge of the distance of the route, the weight

of the mail to be carried, and all other particulars in reference to the route and service; and, also, after careful examination of the forms and instructions attached to said advertisement.

Dated January 21, 1878.

L. R. PRESCOTT, *Bidder*.

[Oath required by section 245 of an act of Congress approved June 23, 1874, to be affixed to each bid for carrying the mail, and to be taken before an officer qualified to administer oaths.]

I, Lyman R. Prescott, of Omega, Cal., bidder for carrying the mail on route No. 46185, from Nevada City to Washington, do swear that I have the ability, pecuniarily, to fulfill my obligation as such bidder; that the bid is made in good faith, and with the intention to enter into contract and perform the service in case said bid shall be accepted.

L. R. PRESCOTT.

Sworn to and subscribed before me, a notary public for the county of Nevada, State of California, this 21st day of January, A. D. 1878, and in testimony thereof I hereunto subscribe my name and affix my official seal the day and year aforesaid.

[L. S.]

Z. M. WALLING,
Notary Public.

NOTE.—When the oath is taken before a justice of the peace or any other officer not using a seal except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath was duly qualified as such officer.

Bids must be accompanied by a certified check or draft on some solvent national bank, payable to the order of the Postmaster-General, equal to 5 per centum on the present annual pay on the route when the present pay exceeds \$5,000; or in case of new service, not less than 5 per centum of the amount of the bond accompanying the bid, if said bond exceeds \$5,000. When the same persons are sureties on more than one bond their unincumbered real estate must equal in value not less than one-fourth the aggregate of all the bonds on which they are sureties.

The proposal must be *signed* by the bidder or each of the bidders and the date of signing affixed.

Direct to the "Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.," marked "Proposals, State of _____."

Proposals for different States must not be inclosed in the same envelop.

NOTE.—Any alteration, by erasure or interlineation of a material part of the following bond will cause it to be rejected unless it appears by a note or memorandum attested by the witnesses, that the alteration was made before the bond was signed and sealed.

When partners are parties to the bond, the partnership name should not be used but each partner should sign his individual name.

Insert the names of the principal and sureties in full in the body of the bond; also the date. The signatures to the bond should be witnessed and each signature must be opposite a separate seal.

BOND.

Know all men by these presents that Lyman R. Prescott, of Omega, Nevada County, in the State of California, principal, E. O. Tompkins and Charles Kent, of Nevada County, in the State of California, as sureties, are held and firmly bound unto the United States of America in the just and full sum of four hundred dollars, lawful money of the United States to be paid to the said United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of January, 1878.

Whereas, by an act of Congress approved June 23, 1874, entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," it is provided: "that every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster," in pursuance whereof, and in compliance with the provisions of said law, this bond is made and executed, subject to all the terms, conditions, and remedies thereon, in the said act provided and prescribed, to accompany the foregoing and annexed proposal of the said Lyman R. Prescott, bidder.

Now, the condition of the said obligation is such that if the said bidder, as aforesaid, shall, within such time after his bid is accepted as the Postmaster-General has prescribed in said advertisement, to wit, on or before the 1st day of June, 1878, enter into a contract with the United States of America, with good and sufficient sure-

ties to be approved by the Postmaster-General, to perform the service proposed in his said bid, and further shall perform said service according to his contract: then this obligation shall be void, otherwise to be in full force and obligation in law.

In witness whereof we have hereunto set our hands and seals this 21st day of Jan'y, 1878.

L. R. PRESCOTT. [SEAL.]
E. O. TOMPKINS. [SEAL.]
CHAS. KENT. [SEAL.]

Witness:

GEO. E. TURNER.
Z. M. WALLING.

Interrogatories.—The following interrogatories are prescribed by the Postmaster-General, to be answered, under oath, by each of the sureties in the foregoing Bond:

1. What amount in value of real estate is owned by you?
2. Of what description—town or city lots, improved or unimproved, or farming land, cultivated or uncultivated?
3. Where is it situated, and in what county and State does record evidence of your title exist? (Answer on next page.)

OATH OF SURETIES.

STATE OF CALIFORNIA, *County of Nevada, ss.*

On this 21st day of January, 1878, personally appeared before me E. O. Tompkins and Charles Kent, sureties in the foregoing bond, to me known to be the persons named in said bond as sureties, and who have executed the same as such, who, being by me duly sworn, depose and say, and each for himself deposes and says he has executed the within bond, that his place of residence is correctly stated therein, that he is the owner of real estate worth the sum hereinafter set against his name over and above all debts due and owing by him, and all judgments, mortgages, and executions against him after allowing all exemptions of every character whatever, the total sum thus assured amounting to (\$800) eight hundred dollars, being double the amount of the foregoing bond.

And in answer to the foregoing interrogatories each of the said sureties further deposes and says that the value, description, and location of his real estate is as follows:

Name of sureties.	Value of real estate.	Description of real estate. (As required by interrogatory No.2.)	Where located, and record-evidence of title.
E. O. Tompkins...	\$1,920	Situated in Washington Tp., Nevada co., Cala., Township 17 N., R. 11 E. Farming lands.....	Nevada county. Evidence of title in recorder's office in Nevada County.
Charles Kent.	2,000.....	Town lot in Nevada City, Cala.....	Nevada City, recorder's office, said county.

E. O. TOMPKINS.
CHAS. KENT.

Subscribed and sworn before me this 21st day of January, 1878.

[L. S.]

Z. M. WALLING,
Notary Public.

NOTE.—When the above oath is taken before a justice of the peace or any other officer not using a seal, except a judge of a U. S. court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer. If the oath is taken before a notary public and his seal is affixed, the certificate of the clerk of a court is not necessary.

CERTIFICATE OF POSTMASTER.

I, the undersigned, postmaster at Nevada City, State of Calif., after the exercise of due diligence to inform myself of the pecuniary ability and responsibility of the principal and his sureties in the foregoing bond, and of the real estate owned by them respectively, do hereby approve said bond and certify that, in my belief, the said sureties are sufficient—sufficient to insure the payment of double the entire amount of the said bond; and I do further certify that the said bond was duly signed by L. R. Prescott, bidder, and E. O. Tompkins and Chas. Kent, his sureties, before signing this certificate.

H. H. HASKINS,
Postmaster.

Dated Jan. 21, 1878.

Postmasters will observe that the improper approval of the bond, or the certificate of the sufficiency of sureties therein, exposes them not only to dismissal, but also to fine or imprisonment.

46185.

1878, May 17, No. 3719.

1st. Discontinue service of J. C. Hogan, of Durham, Orange Co., North Carolina, from July 1, 1878, and allow one months' extra pay.

2nd. Contract with L. R. Prescott, of Omega, Nevada Co., Cal., at his bid of \$600 per annum, for three times a week service (made under advertisement of Nov. 1, 1877), from July 1st, 1878, to June 30, 1882.

46185.

From Nevada City to Washington.

List of bidders and amount of each bid.

A. West Moore.....	\$644
L. R. Prescott (3 t. a w.).....	600
J. M. Peck	488
L. R. Prescott.....	400
Daniel Wellington.....	400
M. V. Nichols.....	390
J. C. Hogan	388

After time.

I. P. Miller (rec'd Feb'y 4, 1878).....	330
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UNITED STATES OF AMERICA,
Omega, Nevada Co., Cal.

No. 46185]

[\$600 per annum.

This article of contract, made May 17th, eighteen hundred and seventy-eight, between the UNITED STATES OF AMERICA (acting in this behalf by the Postmaster-General) and L. R. Prescott, contractor, and E. O. Tompkins, of Pleasant Valley, Cal., and Chas. Kent, of Nevada City, as his sureties.

Witnesseth, That whereas L. R. Prescott has been accepted, according to law, as contractor for transporting the mail on route No. 46185, from Nevada City, Cal., by Omega to Washington and back, three times a week, by a schedule satisfactory to the Department, at six hundred dollars per year, for and during the term beginning July first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two; now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion, if its weight, bulk, or safety shall so require. And that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2d. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oil cloth or bear skin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at, each post-office on the route, or that may hereafter be established on the route (or on any route that may hereafter be established and to which this contract

may be extended as hereinafter provided), and into the post-office at each end of the route, and into the post-office, if one is there kept, at the place at which the carrier stops for the night, and if no post-office is there kept, to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his care and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit, by themselves, or either of them, or either of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks and bags, and other postal supplies, and also the special agents of the Department, on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which services, when performed, the said L. R. Prescott, contractor, is to be paid by the United States the sum of six hundred dollars a year, to wit: Quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease, or extend the service, in accordance with law, he allowing a *pro rata* increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and, in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the service retained. *Provided, however,* That in case of increased expedition, the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid, that they shall forfeit—

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in the mail, matter which should go by mail; or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the discretion of the Postmaster-General, according to the nature or frequency of the failure and the importance of the mail: *Provided that,* except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid, whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service can not be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eight, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

In witness whereof, the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

D. M. KEY,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster General in the presence of—

J. N. DORRIS.

And by the other parties hereto
in the presence of—

J. M. WALLING.

Signed, this 4th day Novr., 1878.

L. R. PRESCOTT, [SEAL.]
Contractor.

Signed, this 30th day Novr., 1878.

E. O. TOMPKINS, [SEAL.]

Signed, this 4 day Decr., 1878.

CHAS. KENT, [SEAL.]
Sureties.

POST OFFICE, NEVADA CITY, CAL., Decr. 9th, 1878.

I hereby certify that E. O. Tompkins, of Pleasant Valley, Nevada County, Cal., and Chas. Kent, of Nevada City, Cal., are good and sufficient sureties for the amount of the foregoing contract.

J. S. HOLBROOK,
Postmaster.

Certificate of the oath of mail contractors and carriers (required by act of Congress of June 8, 1872, as amended by act of March 5, 1874, 18th Stats., p. 19).

[Take this oath after signing the foregoing contract.]

I, L. R. Prescott, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 46185, from Nevada City to Washington, State of California, do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control. And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic: so help me God.

L. R. PRESCOTT,
Contractor.

COUNTY OF NEVADA, STATE OF CALIFORNIA, ss.

Sworn to before the subscriber, a notary public in and for the county and State aforesaid, this 4th day of November, A. D., 1878; and I also certify that the person above named is above the age of twenty-one years to the best of my knowledge and belief.

J. M. WALLING,
Notary Public.

NOTE.—When the oath is taken before a justice of the peace or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added under his seal of office, that the person who administered the oath is duly qualified as such officer.

UNITED STATES OF AMERICA,
Durham, Orange Co., N. C.:

No. 46185. \$388 per annum.

This article of contract, made March 15, eighteen hundred and seventy-eight, between the United States of America (acting in this behalf by the Postmaster-General) and J. C. Hogan, contractor, and Wm. Mangum, of Durham, Orange Co., N. C., and James Tyson, of Durham, Orange Co., N. C., as his sureties:

Witnesseth, That whereas J. C. Hogan *has been accepted according to law*, as contractor for transporting the mail on route No. 46185, from Nevada City, Cal., by Omega to Washington and back, once a week, at three hundred and eighty-eight dollars per year, for and during the term beginning July 1st, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two: Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion, if its weight, bulk, or safety shall so require. And that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2d. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oil-cloth or bear-skin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at, each post-office on the route, or that may hereafter be established on the route (or on any route that may hereafter be established and to which this contract may be extended as hereinafter provided), and into the post-office, at each end of the route, and into the post-office, if one is there kept, at the place at which the carrier stops for the night, and if no post-office is there kept, to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit, by themselves, or either of them, or either of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks and bags, and other postal supplies, and also the special agents of the Department, on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which services, when performed, the said J. C. Hogan, contractor, is to be paid by the United States the sum of three hundred and eighty-eight dollars a year, to wit: Quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease, or extend the service, *in accordance with law*, he allowing a *pro rata* increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary: and, in case of decrease, curtailment, or discon-

tinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the service retained: *Provided, however*, that, in case of increased expedition, the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid, that they shall forfeit—

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in the mail, matter which should go by mail; or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the discretion of the Postmaster-General, according to the nature or frequency of the failure and the importance of the mail: *Provided that*, except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service cannot be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under his contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eight, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

In witness whereof, the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature; and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

D. M. KEY,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General in the presence of—

J. N. DORRIS.

And by the other parties hereto in the presence of—

BARTLETT W. MANGUM.

Signed this 6th day of May, 1878.

JOSEPH C. HOGAN, [SEAL.]
Contractor.

Signed this 6th day of May, 1878.

JAMES TYSON, [SEAL.]

Signed this 6th day of May, 1878.

WILLIAM MANGUM, [SEAL.]
Sureties.

POST-OFFICE, DURHAM, N. C., *May 6th 1878.*

I hereby certify that James Tyson, of Durham, N. C., and Wm. Mangum, of Durham, N. C., are good and sufficient sureties for the amount of the foregoing contract.

D. C. MANGUM,
Postmaster.

THE SCHEDULE OF DEPARTURES AND ARRIVALS.

Leave Nevada City Friday, at 6 a. m., arrive at Washington by 12 m.; leave Washington Friday at 2 p. m., arrive at Nevada City by 8 p. m.

Certificate of the oath of mail contractors and carriers (required by act of Congress of June 8, 1872, as amended by act of March 5, 1874, 18th Stats., p. 19).

[Take this oath after signing the foregoing contract.]

I, J. C. Hogan, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 46185, from Nevada City to Washington, State of Cal., do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of Post-Offices and Post-Roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control. And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic: so help me God.

JOSEPH C. HOGAN,
Contractor.

COUNTY OF ORANGE, *State of N. C., ss:*

Sworn before the subscriber, C. B. Green, a justice of the peace for the county and State aforesaid, this 6th day of May, A. D. 1878; and I also certify that the person above named is above the age of twenty-one years to the best of my knowledge and belief.

C. B. GREENE, *J. P.*

NOTE.—When the oath is taken before a justice of the peace or any other officer not using a seal, except a judge of United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

The undersigned, clerk of the superior court of Wake County, in the State of North Carolina, hereby certifies that C. B. Green, whose name is signed to the above certificate, of the oath of Joseph C. Hogan, is now, and was at the time of signing the same, a duly commissioned and qualified justice of the peace, authorized to administer oaths and affirmations in the State of North Carolina.

[SEAL.]

J. N. BUNTING,
C. S. C. and Probate Judge.

GEORGE F. ROBERTS.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 352.]

The Committee on Claims, to whom was referred the bill (S. 352) for the relief of George F. Roberts, administrator of the estate of William B. Thayer, deceased, surviving partner of Thayer Brothers, and others, having had the same under consideration, beg leave to report the same with the recommendation that it pass.

The Senate report on this bill (Report No. 79, Fifty-second Congress, first session) fully sets forth the facts, and your committee adopts the same and makes it part of this report.

Your committee further recommends that bills H. R. 1034 and H. R. 1400, on the same subject, lie upon the table.

Senate Report No. 79. Fifty-second Congress, first session.

Mr. MITCHELL, from the Committee on Claims, presented the following

REPORT:

[To accompany S. 352.]

The Committee on Claims, to whom was referred the bill (S. 352) for the relief of George F. Roberts, administrator of the estate of William B. Thayer, deceased, surviving partner of Thayer Brothers, and others, having had the same under consideration, submit the following report:

A similar bill was before this committee at the first session of the Fiftieth Congress, at which time the following report was agreed to, being report No. 94 of that session:

The Committee on Claims, to whom was referred bill (S. 394) for the relief of George F. Roberts, administrator of the estate of William B. Thayer, deceased, surviving partner of Thayer Brothers, and others, having had the same under consideration, submit the following report:

A similar bill was before this committee at the first session of the Forty-ninth Congress, at which time the following report was adopted; which was also agreed to in the first session of the Fiftieth Congress, being Report No. 279:

Thayer Brothers, Pate & Co., and J. W. Gaff & Co., in the year 1864, had deposited a large quantity of distilled spirits in a United States bonded warehouse, then under the control of officers of the Government charged with the collection of the internal revenue. That it further appears that the quantity so deposited is correctly stated in the petition of said parties filed with said bill; that it further appears that the quantity originally deposited is correctly stated, as is also the quantity withdrawn; and that during the time said spirits were so deposited, and the time at which the said spirits were withdrawn, there was a percentage of leakage, whereby, as is shown in the case of Thayer Brothers, there is a loss of 7,193.53 gallons; in the case of Pate & Co., a loss of 13,272 gallons; and in the case of J. W. Gaff & Co., a loss of 9,375 gallons. And that it further appears, under direction of the Commissioner of Internal Revenue, these parties severally paid the tax required by law on the quantity originally deposited, without regard to fact of loss by leakage in the year 1867; and that against this said parties then and ever since protested in mode and manner as from time to time they have been advised was best to secure relief, their last resort being to Congress for such relief; their appeal being a protest that such collection of taxes was against a proper construction of the act of Congress, June 30, 1864 (section 55), and was against the practice and rulings of the Internal Revenue office.

Under this enforced collection of taxes upon the quantity lost whilst in the custody of the Government it is claimed, and shown by the proof correctly claimed, that Thayer Brothers paid \$10,790.32, Pate & Co. paid \$19,662.19, and J. W. Gaff & Co. paid \$14,062.50.

There is no question about the facts involved, but there is one as to the proper construction of the act of Congress referred to.

Section 55 of act of Congress approved June 30, 1864, enacts "that in addition to the duties payable for licenses herein provided, there shall be levied, collected, and paid on all spirits that may be distilled and sold, or distilled and removed for consumption or sale of first proof, on and after the 1st day of July, 1864, and prior to the

1st day of February, 1865, a duty of one dollar and fifty cents on each and every gallon." (13 U. S. Stat. L., 243.)

The rules and regulations prescribed by the Commissioner of Internal Revenue, with the sanction of the Secretary of the Treasury, and as acted on by the office and by subsequent Commissioners and Secretaries, notably Secretary Sherman and Commissioner Raum, show, in the language of Secretary Sherman (of date November 14, 1877) :

"There can be no doubt that the assessments for leakage were erroneous and improper."

This in the Whalley case, where the tax was refunded.

The decisions of the Supreme Court sustain the efficacy of power of rules so made and acted on. These facts and law, taken in connection with the decision of the Supreme Court in *Lillenthal v. United States*, 1877 (97 U. S., 268), which, in construing a different section of a same act of Congress, by analogy and logic settle the proper construction of section 55 and support the opinion of Secretary Sherman that the assessment of taxes in such a case as the pending one was erroneous, and hence this committee believes that the taxes collected as aforesaid were illegally collected and should be refunded.

In this conclusion they are supported by favorable reports made from time to time from committees in the House of Representatives, one of which, because of its fullness in detailing the facts, etc., of these cases, they here refer to and adopt as a part of this report, to wit, the report of Mr. Howard, Forty-ninth Congress, first session, H. R. No. 1122. (See Appendix A.)

Your committee add that the same question involved herein was presented under Senate bill No. 1839 (old bill 520), for relief of Richard C. Ridgeway and others, and a report made thereon by Hon. H. E. Jackson in behalf of this committee, and, as thus giving the views of this committee, is here and now referred to as persuasive. (See Senate Report No. 219, first session Forty-ninth Congress.)

APPENDIX A.

[House Report No. 1122, Forty-ninth Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 1264) for relief of George F. Roberts, administrator of Thayer Brothers, Silas Q. Howe, surviving partner of W. T. Pate & Co., and Henry W. Smith, surviving partner of T. and J. W. Gaff & Co., have had the same under consideration, and now report it back to the House with the recommendation that it be passed.

The report made by the Committee on Ways and Means of the Forty-eighth Congress, second session, states the facts connected with the claim of Thayer Brothers, and your committee adopt the same.

The material facts in the case of Thayer Brothers are that, during the period from July 1 to December 31, 1864, they deposited in a bonded warehouse in the fifth district of Illinois, which was under the control of the collector and the store-keeper, 3,100 barrels of distilled spirits, containing when deposited, as shown by the certificates of the inspector, 190,182.12 gallons; that when said barrels were withdrawn and reinspected there were, as shown by the reinspection, only 182,988.58 gallons, making an actual loss while in said warehouse of 7,193.53 gallons; that they were required by the collector to pay the tax of \$1.50 per gallon upon the quantity placed in the bonded warehouse, making the tax paid on the quantity lost by leakage while in warehouse \$10,790.32. They filed their affidavit on the regular form (46) with the Commissioner of Internal Revenue for a refund of said tax July 18, 1867, averring the facts to be as above stated, and that the tax paid on the quantity lost by leakage while in warehouse was illegal, erroneous, and improper, and ought to be refunded, and to this affidavit was affixed the certificates of the proper internal-revenue officers.

The assistant assessor certified to the facts as follows:

ASSISTANT ASSESSOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit, and that I believe the statements to be in all respects just and true.

August 22, 1867.

THOMAS ELLIS,
Assistant Assessor, Fourth Division, Fifth District.

The assessor also certified to the facts as follows:

ASSESSOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit of William B. Thayer, and that I believe the statements to be in all respects just and true; and I further certify that, from present personal examination, I find the sum of \$10,790.32 is part of \$432,976.09 reported against the said Thayer Brothers on page 1, line 15 of the list on Form 60, for December, 1864, now on file in my office, and that the tax is included in the collector's aggregate receipt for the said list transmitted by me to the Commissioner of Internal Revenue, and that the claim has not heretofore been allowed in any form. Said receipt amounts to \$713,632.23.

September 10, 1867.

GEORGE I. BERGEN,
Assessor, Fifth District, Illinois.

The collector of the district at the time the tax was paid certifies as follows:

COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify, upon personal examination, that the name of the claimant and the amount claimed are found reported on Form 60, for December, 1864, now on file in my office, and that the same was paid to me on the 20th, 23d, 24th, 28th, 30th, and 31st days of December, 1864, and are included in my aggregate receipt for said list, the receipt amounting to \$713,632.23, delivered to the assessor to be transmitted to the Commissioner of Internal Revenue.

September 11, 1867.

JOHN H. BRYANT,
Late Collector, Fifth District, Illinois.

The United States inspector for said district during the time such spirits were stored in the bonded warehouse swears that he had in charge the bonded warehouse of Thayer Brothers, as the United States storekeeper, and said spirits were under his control and in his possession; that he personally inspected and reinspected said spirits, and that he was present when they were deposited in the bonded warehouse, and also present when they were withdrawn from said bonded warehouse; that there were deposited in said warehouse from July 1, 1864, to December 31, 1864, 190,182.12 gallons, making the tax paid \$285,273.18, which included the leakage, and that the quantity actually withdrawn was only 182,988.50 gallons; showing by actual gauging that the quantity lost by actual leakage and evaporation while said spirits were stored in said bonded warehouse, and while under his control and in his possession, was 7,190.50 gallons, and that the tax paid upon the quantity so lost by leakage and evaporation was \$1.50 per gallon, and amounted to \$10,790.32, and paid upon the indential spirits in which the leakage, evaporation, and soakage occurred. His tabular statement shows in detail the quantity inspected and reinspected. This claim was, by the Commissioner of Internal Revenue, June 13, 1868, suspended until a decision should be had in the similar claim of Pate & Co., and the Commissioner of Internal Revenue did not take action in this similar claim of Pate & Co. until May 18, 1882, when he recommended that this claim of Pate & Co. be allowed and paid. These claimants, or their legal representatives, have been almost constantly urging its allowance, either before the Departments, the courts, or Congress, ever since the same was assessed and collected. The Committee on Ways and Means at the Forty-eighth Congress unanimously recommended the payment of this claim, and reported a bill for its payment. Your committee therefore recommend the passage of the accompanying bill.

In the claim of Silas Q. Howe, surviving partner of W. T. Pate & Co., the material facts are, that during the period from July 1 to December 31, 1864, Pate & Co. deposited in a bonded warehouse in the third district of Indiana, which was under the control of the collector and storekeeper, 4,196 barrels of distilled spirits, containing when deposited, as shown by the certificate of the gauger's inspections, 213,885½ proof gallons; that when said barrels were withdrawn upon reinspections and regauge there were only 200,613½ proof gallons, making the actual loss 13,272 proof gallons; that the collector required them to pay the tax of \$1.50 per gallon upon the quantity deposited in the bonded warehouse, making the tax paid upon the quantity lost by actual leakage while in bonded warehouse \$19,908.

On the 26th day of October, A. D. 1866, and on the 27th day of July, A. D. 1871, they filed with the Commissioner of Internal Revenue their affidavit, on the regu-

lar Treasury Form 46, averring that the facts were as above stated, and that the tax paid upon the quantity lost by leakage while in bonded warehouse was illegal, erroneous, and improper, and ought to be refunded; to these affidavits were affixed the certificates of the proper internal-revenue officer in corroboration of the aforesaid facts.

J. S. Smith Hunter, the collector of internal revenue at the time said spirits were in bonded warehouse, in his deposition filed in the Court of Claims, testifies that he was collector of internal revenue from July 1 to December 31, 1864; that during said time Pate & Co. deposited in bonded warehouses, approved by him, 213,885½ proof gallons; that on the 15th, 25th, and 30th days of December, 1864, he required the tax of \$1.50 per gallon to be paid on all the spirits stored in the warehouse, amounting to \$320,828.25, which sum he paid over to the United States; that said bonded warehouses were under his control and subject to his orders all the time said spirits were stored. (See printed deposition.)

The deposition of S. Q. Howe, October 2, 1867, proves the quantity deposited, withdrawn, leakage, and tax paid to be as before stated. (See printed record.) The deposition of W. T. Pate, taken at same time, proves the facts to be as stated, and that the cooperage was bad. William Emerson, in his deposition, swears that the cooperage was bad.

The United States inspector or gauger, in his deposition taken October 1, 1867, and his affidavit of date of June 10, 1868, swears that in person he inspected or gauged all the spirits distilled by Pate & Co. from July 1 to December 31, 1864; that the bonded warehouse was in his custody, and the spirits in his possession as United States storekeeper; that he was present during the time aforesaid, and Pate & Co. deposited 4,196 barrels of distilled spirits, containing 213,885½ gallons, first proof, in bonded warehouse, and the tax paid thereon amounted to \$320,828.25; that in December, 1864, he was present when the same were withdrawn from bonded warehouse; that he in person reinspected or regauged the 4,196 barrels aforesaid, and they only contained 200,613½ proof gallons; that the quantity lost by leakage and evaporation was 13,272 gallons proof spirits; that the cooperage was bad, and that the tax was paid after the evaporation had occurred in the quantity deposited, including the quantity lost by leakage.

In his detailed statement, dated June 10, 1868, giving the inspections or gangings, and the reinspections or regauges, the same shows that 13,272 gallons, first proof, was lost while in bonded warehouse; and in his affidavits of April 17 and 27, 1882, he gives the manner how he inspected and reinspected, and that the instruments used were those provided by the United States Government, and that the leakage stated in his affidavit of June 10, 1868, actually occurred, and that W. T. Pate & Co. lost the whisky and paid the tax upon it besides; that he was particular in gauging and regauging.

To the application, verified by affidavit of W. T. Pate, setting forth the facts as stated, dated August 31, 1870, and filed with the Commissioner of Internal Revenue, the collector at the time said tax was assessed and collected affixed his certificate thereto as follows:

COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify upon personal examination that the name of the claimant and the amount claimed are found reported on page 1, line 1, of the list, on Form 60, for December, 1864, heretofore and now on file in my office, and that the same was paid to me on the 15th, 25th, and 30th days of December, 1864, and are included in my aggregate report on Form 60, which aggregate amounted to \$350,957.62, which were delivered to the assessor to be transmitted to the Commissioner of Internal Revenue on or about the 23d day of January, 1865, and that the sum collected in said month from W. T. Pate & Co., and reported as aforesaid, amounted to \$320,828.25.

J. S. SMITH HUNTER,
Late Collector Third District, Indiana.

BLOOMINGTON, IND., *July 28, 1871.*

On the back of the application for a refund, verified by affidavits filed in the Internal-Revenue Office, July 27, 1871, was indorsed:

"Examined and submitted for allowance July 7, 1880, by Breckenridge, who was chief of the refunding division."

The Commissioner of Internal Revenue, Gen. Green B. Raum, in person examined this claim, and in his letter, dated May 18, 1882, says:

"Pate & Co., from July 1 to December 31, 1864, deposited in bonded warehouse 4,186 barrels distilled spirits, containing 213,885½ gallons proof spirits; when these packages were removed from warehouse they contained, by actual inspection, only 200,613½ proof gallons. This tax of \$1.50 was collected on full quantity deposited,

amounting to \$320,828.25. The tax due on the 200,613½ gallons actually found in the packages on withdrawal was \$300,920.25, showing an excess of \$19,908 collected. In computing the leakage in transit, the sum of \$245.81 was computed on the full quantity bonded. I propose to allow the claim for the remainder of the tax appearing to have been paid by these claimants in December, 1864, as set forth, on spirits lost by leakage and evaporation while stored in bonded warehouse, to wit, \$19,662.19.

“Very respectfully, your obedient servant,

GREEN B. RAUM,
“Commissioner.”

There is a great deal of other evidence in the record not necessary to be stated here, as it merely corroborates that of the assessor, collector, and inspector. Upon this testimony, and after a very careful examination of all the facts contained in this voluminous record before us, the committee are of the opinion that there was an erroneous assessment and collection of \$19,662.19, and that it ought to be refunded, as recommended by the Commissioner of Internal Revenue. The claimants have been continually urging a refund ever since said sum was paid, and your committee therefore recommend the passage of the accompanying bill.

The material facts in the claim of Henry W. Smith, surviving partner of T. and J. W. Gaff & Co., are that during the period from July 1 to December 31, 1864, they deposited in a bonded warehouse, in the fourth district of Indiana, which was under the control of the collector and the storekeeper, 4,254 barrels of distilled spirits, containing, when deposited, 208,748½ gallons; that when said barrels were withdrawn they only contained 199,373½ gallons, as shown by the evidence, making the actual loss 9,375 proof gallons; that the collector required them to pay the tax of \$1.50 per gallon on the quantity deposited in bonded warehouse, making the tax paid on the quantity lost by leakage while in the bonded warehouse \$14,062.50. In the year 1866 these claimants employed the attorney who was prosecuting the Pate and Thayer claims before the Departments to prosecute their claim, and while waiting for a decision in the Pate claim the time expired in which to file the same, without fault of these claimants.

The affidavit of Henry W. Smith sets forth the facts as before stated, and avers that the assessment and payment of the tax is illegal and erroneous, and assessed upon a quantity that did not exist when collected, and that the tax was assessed after the loss occurred.

The certificates of the officers of internal revenue are affixed thereto.

The deputy collector of said district certifies as follows:

DEPUTY COLLECTOR'S CERTIFICATE.

I, George Pfalzgraf, deputy collector second division, sixth district, do hereby certify that I have personally investigated the statements made in the within affidavit by comparing the quantity claimed for leakage with the quantity actually allowed for leakage during subsequent years, and from the best information I can obtain after careful inquiry I believe such statements to be in all respects just and true.

GEO. PFALZGRAF,

Deputy Collector, Second Division, Sixth District, Indiana.

LAWRENCEBURG, August 25, A. D. 1885.

The clerk in charge of division of accounts in the office of Commissioner of Internal Revenue certifies as follows:

“I hereby certify that the records of this office show that receipts on Form 61 were given by late Collector J. L. Yater, covering the amounts mentioned on the first page of Collector Hunter's certificate, and that his reports on Forms 86 and 87 show that the same was collected.

“Division of Accounts, September 30, 1885.

“B. H. COLLINS,
“In charge of Division of Accounts.”

The collector of the district at the time said tax was paid certifies as follows:

COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the matters set forth in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify, upon personal examination, that I find the sum for July \$57,415.50, August \$55,524, and September \$79,206, reported against the said T. and J. W. Gaff & Co., on page 1, line 1, of the list on Form 60, for July, August, and September, 1864, and also the sum for October \$72,331.50, November \$48,291.75, and

December \$115,109.25, reported against T. and J. W. Gaff & Co., on page 1, line 1, of the lists on form 60 for October, November, and December, 1864, now on file in my office, and that the same was paid to me on August 31, September 16, 1864, and on the 2d, 15th, 22d, and 31st days of December, 1864, and are included in my aggregate receipts for said lists, amounting to \$643,209, and transmitted to the Commissioner of Internal Revenue, and that no claim for the assessments herein complained of has heretofore been presented; the money herein claimed was not paid on a compromise, and that I was the collector of internal revenue in 1864, during the time said spirits were deposited and withdrawn from bonded warehouse.

October 12, 1885.

JAMES L. YATER,
Late Collector, Fourth District, Indiana.

The assistant assessor at the time said spirits were in bonded warehouse certifies as follows:

ASSISTANT ASSESSOR'S CERTIFICATE.

I hereby certify that I was assistant assessor at the time said spirits were bonded and withdrawn from bonded warehouse in 1864; that I was well acquainted with the members of the firm of T. and J. W. Gaff & Co. in 1864, and from their high standing and the careful investigation of the facts set forth in the within affidavit, I believe the statements to be in all respects just and true.

August 25, 1885.

P. LOUIS MATHEWS,
Late Assistant Assessor, ——— Division, Fourth District, Indiana.

The present collector of internal revenue certifies as follows:

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, INDIANA,
Lawrenceburg, August 25, 1885.

I hereby certify from present personal examination and the personal knowledge of said firm, I believe the statements to be in all respects just and true, and that I find the sum of \$427,878.50 reported against T. and J. W. Gaff & Co. on page 1, line 1, of the lists on Form 60, for the following months, to wit: July, \$57,415.50; August, \$55,524; September, \$79,206; October, \$72,331.50; November, \$48,291.75; December, \$115,109.25, and are included in the aggregate receipts for said lists, the receipts amounting in July, to \$114,537; in August, \$106,431; in September, \$126,576; in October, \$108,277.50; in November, \$66,978; in December, \$120,409.50; which were transmitted to the Commissioner of Internal Revenue, and that I do not find that any claim for the assessment complained of has heretofore been presented, nor do I find anything going to show that the money herein claimed was paid on a compromise.

August 25, 1885.

WM. D. H. HUNTER,
Collector, Sixth District of Indiana.

And said collector, under date of September 11, 1885, certifies that the same was paid, as appears from daily record of internal-revenue collections for the fourth district of Indiana, as follows: August 31, 1864, \$11,726.25; September 16, 1864, \$3,704.25; December 2, 1864, \$9,470.25; December 15, 1864, \$48,890.25; December 22, 1864, \$76,391.25; December 31, 1864, \$273,540.75. There is also a certified copy of the bonded warehouse books, showing the quantity deposited and the quantity withdrawn, which, like other evidence produced, corroborates the evidence already referred to. We therefore recommend a bill to pay said claim.

Hon. John Sherman, while Secretary of the Treasury, in a letter to Hon. Green B. Raum, Commissioner of Internal Revenue, dated November 14, 1877, in speaking of distilled spirits stored in a United States bonded warehouse, says, "there can be no doubt that the assessments for leakage were erroneous and improper."

The Court of Claims found as a fact that the practice had been uniform to only assess the tax upon the quantity withdrawn from bonded warehouse prior to 1869. (18 Court of Claims, 709, Finding 3.) It is admitted that the Court of Claims had no jurisdiction of tax cases (7 Wall., 122; 9 Court of Claims, 367), and that the circuit court of the United States had none (9 Wallace, 560). It is also admitted by the Commissioner of Internal Revenue that it was the general practice to allow similar claims for the loss by leakage while in bonded warehouse under the act of 1864, and that the instructions and regulations of the Commissioner, approved by the Secretary, provided for such allowances, and that the collectors' bonded accounts were settled by crediting the loss for leakage while in bonded warehouse. In a letter of Commissioner

Raum, dated May 18, 1882, proposing to allow one of these claims, all being taxed by the same law, he says:

"The allowance for loss by leakage while in warehouse was allowed, and collectors instructed to allow under the act of 1864, but that in some few cases the collectors misunderstood the law and collected the tax on the spirits that had been lost by leakage while in warehouse."

And from his letter it would appear that there are only four refunding cases that have not been allowed under the act of 1864. Commissioner Walter Evans, in his letter of March 17, 1884, says:

"That it was the general practice to allow the loss of spirits by leakage while in warehouse under the act of 1864, and this accounts for so few cases for refunding being presented."

The Hon. Salmon P. Chase, Hon. Hugh McCulloch, and Hon. William P. Fessenden, while they were Secretaries of the Treasury, as also the Hon. Joseph J. Lewis, Hon. E. A. Rollins, and Hon. Green B. Raum, while they were Commissioners of Internal Revenue, each, by letters, opinions, regulations, and circulars, held that the tax was only to be collected on the quantity withdrawn from warehouse, or sold or removed for sale, etc., and their interpretation of the law was sustained by the Supreme Court of the United States in 97 United States, 268, October term, 1877, where the court decides that no tax can be collected under the act of 1864, section 94, unless *sold* or removed for *sale*, and this section 94 is the same as section 55 of the act of 1864, which levied the tax upon these claimants' spirits, and the Committee on Ways and Means of the Forty-sixth Congress, second session, Report No. 1119, page 15, made by Hon. John G. Carlisle, M. C., says "that the act of 1864 only taxed the quantity sold or removed for sale, and only taxed the quantity sold."

And the same construction was again given to the same law by the same committee of the Forty-seventh Congress, first session, Report No. 1277, page 14, made by Hon. William D. Kelley (chairman), and the Attorney-General of the United States, in 16 Opinions of Attorneys-General, 667, decides that under the act of 1864 the tax can only be collected on what was sold or removed for sale, etc., and was only collectible when it was removed into private hands. Therefore, as it is shown that the law allows, as also the regulations of the Department, and that the invariable construction of the act of 1864 was that it only taxed what was sold, etc., or the quantity withdrawn from bonded warehouse, and, in accordance with the construction given, all loss by leakage while in bonded warehouse was allowed. The bonded accounts of the collectors of internal revenue were settled by allowing them credit for the loss by leakage while in bonded warehouse, and several claims for such loss have been allowed and paid by the Treasury Department, and a large number of such claims have been abated, and it appears from the letters of the Commissioner of Internal Revenue that only three remain unsettled besides the Thayer case. Therefore it would be but just and right to allow these remaining claims, and your committee are of the opinion that there was an erroneous assessment and collection of these taxes, and that they ought to be refunded.

We therefore recommend the passage of the accompanying bill.

The foregoing report sets out the facts correctly and states the law truly, and there is no hesitation in declaring that claimants are entitled to a refund of whatever tax they have paid on any amount over and above the number of gallons actually withdrawn.

Your committee therefore report back bill S. 394 without amendment, and recommend its passage.

Your committee readopt the foregoing report and report the bill (S. 352) back without amendment, and recommend its passage.

CLAIMS FOR CERTAIN STORES AND SUPPLIES.

JUNE 2, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 4675.]

The Committee on War Claims, to whom was referred the bill (H. R. 4675) for the allowance of certain claims for stores and supplies taken and used by the Army of the United States, etc., submit the following report:

The facts out of which this bill for relief arises will be found stated in House report from the Committee on War Claims of the Fifty-first Congress, which report is hereto annexed as a part of this report.

Your committee concur in the conclusions stated in that report and recommend the passage of the bill.

House Report No. 2611, Fifty-first Congress, first session.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 4411.]

The Committee on War Claims, to whom was referred the bill (H. R. 4411) for the allowance of certain claims for stores and supplies taken and used by the Army of the United States, as reported by the Court of Claims, under the provisions of the act of March 3, 1883, known as the Bowman act, report as follows:

That the Committee on War Claims of the Forty-ninth Congress referred these claims to the Court of Claims for a finding of facts. The said court has returned the claim with the following findings, to wit:

[House Mis. Doc. No. 568, Fiftieth Congress, first session.]

Letter from the Assistant Clerk of the Court of Claims, transmitting a copy of findings of fact in the case of Jesse K. Vawter vs. The United States.

[Jesse K. Vawter vs. The United States. Congressional case No. 235.]

UNITED STATES COURT OF CLAIMS, CLERK'S OFFICE,
Washington, September 8, 1888.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court January 10, 1887, in the aforesaid cause, which case was referred to this court by the Committee on War Claims, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. JOHN G. CARLISLE,
Speaker of the House of Representatives.

FINDINGS OF FACT.

The claim in the above entitled suit having been transmitted to this court by the Committee on War Claims of the House Representatives on the 23d day of January, 1885, and the Attorney-General having appeared for the defendants, and the suit having been brought to a hearing on the 6th day of January, 1887, the court, upon the proofs and evidence, and after hearing G. A. Jordan, esq., of counsel for the claimant, and Lewis Cochran, esq., of counsel for the defendants, finds the following facts:

I.

The claimant is a resident of Jennings County, Ind., where he resided and carried on the business of farming during the late war, and was loyal to the Government of the United States throughout said war.

II.

About the 12th day of July, 1863, a large number of United States troops, under the command of General Lew Wallace, concentrated at North Vernon, Ind., for the purpose of joining the forces of General Hobson in the pursuit of the enemy under the command of General Morgan in his raid through the States of Indiana and Ohio, took from the claimant for the use of the United States forces two horses, saddles, and bridles, all of the value of \$175, which has never been paid to him.

BY THE COURT.

Filed January 10, 1887.

A true copy.

Test: This 8th day of September, A. D. 1888.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[In the Court of Claims. Congressional case No. 235. Jesse K. Vawter vs. The United States. Filed May 27, 1885.]

To the Honorable the Judges of the Court of Claims:

The petition of Jesse K. Vawter respectfully represents:

I. That he is a citizen of the United States and a resident of the county of Jennings and State of Indiana.

II. That the defendants are indebted unto him in the sum of \$150 for the value of one horse taken on or about the — day of July, 1863, by the command of General Hobson, for the use of and which was used by the Army of the United States, and for which no receipt was given by the proper officer receiving the same.

III. That said claim was presented to the Quartermaster-General under the act of July 4, 1864, and payment denied; that he therefore presented said claim to the Forty-eighth Congress for relief, and while the same was pending in the House of Representatives before the Committee on War Claims it was referred by said committee to this court under the act of March 3, 1883, to find the facts.

IV. That your petitioner has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the United States; that no assignment or transfer of said claim or any part thereof, or any interest therein, has been made; that he is justly entitled to the amount therein claimed from the United States, after allowing all just claims and set-offs; and therefore prays that, in accordance with the provisions of said act, a report be made by this honorable court to the said committee of the facts in this case for its consideration; and for such other or further relief as your petitioner may be entitled to in the premises.

JESSE K. VAWTER,
By J. F. KINNEY,
His Attorney in Fact.

J. F. KINNEY,
J. T. POWER,
Attorneys of Record.

Post-office address of claimant, North Vernon, Ind.; J. F. Kinney, Cincinnati, Ohio; J. T. Power, Washington, D. C.

STATE OF OHIO,
County of Hamilton, ss:

Before me, a notary public in and for said county and State, personally appeared J. F. Kinney, who, being duly sworn, says he is the attorney in fact of Jesse K. Vawter, and has for him and in his name subscribed the foregoing petition, and that he believes the facts as stated in said petition to be true.

J. F. KINNEY.

Subscribed and sworn to before me this 24th day of April, 1885.

D. S. VANPELT,
Notary Public, Hamilton County, Ohio.

CLAIMS FOR STORES AND SUPPLIES.

[House Mis. Doc. No. 569, Fiftieth Congress, first session.]

Letter from the assistant clerk of the Court of Claims, transmitting a copy of findings of fact in the case of David Hicks against the United States.

[David Hicks *vs.* The United States. Congressional case No. 232.]

UNITED STATES COURT OF CLAIMS, CLERK'S OFFICE,
Washington, September 8, 1888.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court January 17, 1887, in the aforesaid cause, which case was referred to this court by the Committee on War Claims, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Hon. JOHN G. CARLISLE,
Speaker of the House of Representatives.

FINDINGS OF FACT.

The claim in the above entitled suit having been transmitted to this court by the Committee on War Claims of the House of Representatives on the 23d of January, 1885, the Attorney-General having appeared for the defendants, and the suit having been brought to a hearing on the 5th day of January, 1887, the court, upon the proofs and evidence, and after hearing J. F. Kinney, esq., of counsel for the claimant, and Lewis Cochrane, esq., of counsel for defendants, finds the following facts:

I.

The claimant was employed on or about the 22d day of July, 1861, by Lieut. Israel Underwood, quartermaster of the Fourth Ohio Infantry, with the approval of the colonel of the regiment, of the post quartermaster of Camp Dennison, Ohio, to act as wagon-master of that regiment at a compensation of \$100 per month.

II.

He entered immediately upon his duties and continued to perform them, and such other duties to which he was from time to time assigned, until May 12, 1862.

III.

On or about the 25th of August, 1861, he was paid to include the period from July 22 to August 24, 1861, when his pay was reduced to \$75 per month. He continued at that rate until November 1, 1861, when, under the direction of Colonel Mason, commanding artillery brigade, in the command of General Lander, in West Virginia, his pay was again reduced to \$65 per month, at which rate it remained until he left the regiment.

IV.

About the 12th day of April, 1862, the following voucher was issued to him as evidence of the amount due him up to April 5, 1862:

No. 22.

The United States to David Hicks, Dr.

1861.

Aug. 25.	To services as wagon-master of the Fourth Regiment Ohio Volunteers, U. S. Army, from August 25, 1861, to November 1, 1861, at \$75 per month	\$165.00
Nov. 1.	To services as above from November 1, 1861, to February 11, 1862, at \$65 per month	216.18
Mar. 11.	To services as above from March 11, 1862, to April 5, 1862, at \$65 per month	49.82
		431.00

Four hundred and thirty-one dollars.

I certify that the above account is correct and just; that the services were rendered as stated; and that they were necessary for the public service.

A. W. LIPPITT,

Quartermaster, Fourth Ohio Regiment, United States Volunteers.

Approved from November 1.

J. M. MASON,

Artillery Brigade.

JAS. H. GODMAN,

Lieutenant-Colonel, Fourth Ohio, Commanding.

V.

On presentation of this voucher to the paymaster the claimant for the first time learned that citizen wagon-masters were not authorized, and he then left the service.

When he presented this voucher to the Third Auditor for payment the Quartermaster-General reported as follows, as indorsed thereon, viz:

[Indorsement-]

TREASURY DEPARTMENT, *August 17, 1863.*

Referred to Quartermaster-General for examination, who, under date of May 12, 1863, reports as follows;

"No reports have been received at this office covering the time and amount claimed. Besides, the hire of a citizen for service as wagon-master of a regiment is unauthorized. The regimental quartermaster-sergeant is the proper wagon and forage master of the regiment. The Quartermaster-General can not approve this account."

On which it was rejected, and the claimant, on June 18, 1866, petitioned Congress for relief.

The report of the Quartermaster-General that "no reports have been received at this office covering the time and amount claimed" is a mistake, as Lieutenant Underwood reported the service of claimant from October 1 to November 1, 1861, at \$75 per month, and from November 1, 1861, to January 1, 1862, at \$65 per month, while Lieut. A. W. Lippitt reported the services from January 1 to February 1, and from February 11 to April 1, at \$65 per month.

VI.

While the claimant was employed as a wagon-master of a regiment, and the voucher so states his service, yet it appears from the evidence that his services were not confined to regimental duties.

They appear to have included, for at least a part of the time, the duties of a wagon-master of a separate command.

He had charge of about 22 two-horse teams and 24 men. His duties were laborious and responsible, and the compensation stated in the voucher is not excessive. He was afterwards employed by the Government in no more responsible positions at the rate of \$75 and \$100 per month.

For a short time he acted as mail agent for General Lander's command, for which he received no compensation and for which he makes no claim.

He acted as quartermaster of his regiment for several months during the illness of the quartermaster, and for a time as forage-master of the artillery brigade, under Colonel Mason, who approved the voucher.

The claimant's services were reasonably worth the sum of \$340 in addition to what has been paid to him.

BY THE COURT.

Filed January 17, 1887.

A true copy.

Test this 8th day of September, A. D. 1888.

JOHN RANDOLPH,

Assistant Clerk, Court of Claims.

[In the United States Court of Claims, December term, 1884-'85. *David Hicks vs. The United States.* Congressional case No. 233. Filed May 27, 1885.]

To the honorable judges of the Court of Claims:

The petition of David Hicks respectfully represents, that he is a citizen of the United States and a resident of Hamilton County, State of Ohio.

That he was employed, on or about the 22d day of June, 1861, by the defendants as wagon-master in the United States Army, at the rate of \$100 per month, and per-

formed the services of wagon-master and such other duties to which he was from time to time assigned by his commanding officer from that date until the 5th day of April, 1862.

That he was employed on behalf of the defendants by Israel Underwood, lieutenant and quartermaster of the Fourth Ohio Volunteer Infantry Regiment, under the authority and approval of Col. Lamsen Andrews, commanding said regiment, and Captain Treat, chief quartermaster at Camp Dennison, Ohio.

That he entered upon his duties as wagon-master at Camp Dennison, Ohio, and accompanied the troops to Clarksburgh, W. Va., where he was detailed in charge of the supply train and remained in charge thereof, performing all the duties of the wagon-master of Fourth Regiment Ohio Infantry Volunteers, or detached command, except when detailed to other duties, until the 5th day of April, 1862, when he was discharged.

That he was paid by Quartermaster Underwood for said services until on or about the 25th day of August, 1861, at the rate of \$100 per month.

That at that date his pay was reduced to \$75 per month, at which rate he served until November 1, 1861. His pay was then reduced to \$65 per month, at which rate he served until the date of his discharge.

That on his discharge there was due him the sum of \$431, for which, owing to want of funds, a certified account was issued to him by A. W. Lippitt, quartermaster of said Fourth Ohio Volunteer Infantry Regiment, and approved by James H. Godman, lieutenant-colonel commanding, and from November 1 by John S. Mason, commanding artillery brigade.

That on presentation of said voucher to the Third Auditor of the Treasury for payment it was rejected on the report of the Quartermaster-General that no reports had been received covering the time and amount claimed and that his employment was unauthorized.

That he then petitioned Congress for relief, and while the same was pending in the Forty-eighth Congress, in the House of Representatives, before the Committee on War Claims, it has been referred to this court by said committee under the act of March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government."

Your petitioner further avers that he has at all times borne true allegiance to the Government of the United States, and has not, at any time or in any way, aided, abetted, or given encouragement to rebellion against the United States; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that he is justly entitled to the amount therein claimed from the United States, after allowing all just claims and set-offs; and therefore prays that, in accordance with the provisions of said act, a report be made by this honorable court to said committee of the facts in this case for its consideration, and for such other or further relief as your petitioner may be entitled to in the premises.

DAVID HICKS,
By J. F. KINNEY,
His Attorney in Fact.
J. F. KINNEY,
J. T. POWER,
Attorneys of Record.

STATE OF OHIO, *County of Hamilton*, ss :

Before me, a notary public in and for said district, personally appeared J. F. Kinney, who, being duly sworn, says that he is the attorney in fact of David Hicks, and has for him in his name subscribed the foregoing petition, and that he is informed and believes that the petitioner is justly entitled to the amount claimed and that the facts stated in said petition are true.

J. F. KINNEY.

Subscribed and sworn to before me this 24th day of April, 1885.

D. S. VANPELT,
Notary Public, Hamilton County, Ohio.

P. O. address of claimant: Cincinnati, Ohio.

P. O. address of attorneys: J. F. Kinney, Cincinnati, Ohio; J. T. Power, Washington, D. C.

[House Mis. Doc. No. 570, Fiftieth Congress, first session.]

Letter from the assistant clerk of the Court of Claims, transmitting a copy of findings of fact in the case of George Keel against the United States.

[George Keel vs. The United States. Congressional case, No. 304.]

UNITED STATES COURT OF CLAIMS, CLERK'S OFFICE,
Washington, September 3, 1888.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court April 25, 1887, in the aforesaid cause, which case was referred to this court by the Committee on War Claims, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. JOHN G. CARLISLE,
Speaker of the House of Representatives.

FINDINGS OF FACT.

The claim in the above-entitled suit having been transmitted to this court by the Committee on War Claims of the House of Representatives on the 14th day of February, 1885, and the Attorney-General having appeared for the defendants, and the suit having been brought to a hearing on the 18th day of April, 1887, the court, upon the proof and evidence, and after hearing J. F. Kinney, esq., of counsel for the claimant, and Lewis Cochran, esq., of counsel for the defendants, finds the following facts:

I.

The claimant is a citizen of the United States, and during the late war resided on his farm in Hamilton County, Ohio, at the mouth of Five Mile Creek, on the Ohio River, about 10 miles above Cincinnati.

Upon preliminary inquiry it appears that he was loyal to the Government of the United States throughout the war for the suppression of the rebellion.

II.

September 2, 1862, Governor Tod, of Ohio, by proclamation and circular, called into the service of the State a portion of the Home Guards, known as the "Ohio River Defense Militia," in Hamilton County.

Lewis Wallace, major-general of the United States Volunteers, who was at that time in Cincinnati "unassigned and waiting orders," assisted the State authorities in organizing this militia force and issued the following order:

HEADQUARTERS UNITED STATES FORCES,
Cincinnati, Ohio, September 5, A. D. 1862.

SPECIAL ORDER NO. 37.

Maj. R. M. Corwine is hereby instructed to proceed at once to organize, for immediate service on the Ohio River, all able-bodied men now within the county of Hamilton who owe military duty and reside contiguous to said river outside the limits of the city of Cincinnati.

They shall be detailed for duty for the present at such points and localities on the Ohio River as said Corwine may deem proper.

The chief object of this order is to provide, in connection with gun-boat service, the necessary guard and protection to the people and their property on the Ohio River and its vicinity, and to that end all are thus organized, and their officers shall be under command of said Corwine, unless required for duty on some other service, when they will be subject to the order of Major-General Lew. Wallace, commanding general.

By order.

LEWIS WALLACE,
Major-General, Commanding.

J. C. ELSTON,
A. D. C. and Chief of Staff.

Major Corwine then issued the following order:

HEADQUARTERS RIVER DEFENSE No. 9, BURNET HOUSE,
Cincinnati, Ohio, September 7, A. D. 1862.

GENERAL ORDER No. 3.

The able-bodied men subject to military duty residing in Mill Creek, White Water, Miami, Storrs, Delhi, Columbia, Spencer, and Anderson Townships will assemble forthwith at the most convenient place in their respective townships, and organize themselves into companies of not less than one hundred men each, and organize by electing one captain, a first and second lieutenant, and forthwith forward to these headquarters their enrollment and organization, subject to orders from headquarters, for duty designated in Special Order No. 37, Major-General Wallace, dated September 5, 1862, and published in the Cincinnati Enquirer of this date.

R. M. CORWINE,
Major, Commanding,

The order relieving these forces from duty is as follows:

HEADQUARTERS RIVER DEFENSE,
September 16, 1862.

In accordance with orders from Major-General Wright, companies belonging to this command have leave to go home and there remain until further orders, but they are expected to keep up their regimental and company organizations and continue company drill every day.

The gentlemen who have so diligently aided me in the work of organizing in the field and at these headquarters will hold themselves in readiness for further orders whenever the major-general commanding the Department of the Ohio shall call upon the forces which we have assisted to organize for further duties. Major-General Wright directs me to thank all under my command for the satisfactory manner in which they have discharged their duties, which I do with more pleasure because I know how well it is deserved.

R. M. CORWINE,
Major, Commanding River Defense.

III.

During the month of September, 1862, two regiments of this militia encamped upon the claimant's farm for about two weeks. They occupied some rooms in his dwelling-house, slept in his barn, occupied about 20 acres for camp and drill, kept their horses in his stable, and did some damage to 5 acres of growing corn and 3 acres of growing potatoes.

For this occupation, use, and injury the claimant filed in the Treasury Department the following bill:

Use and occupation of residence, barn, and stable	\$200
Use and occupation of 20 acres for camp and drill	200
Damage to 5 acres of growing corn and 3 acres of growing potatoes	100

This claim was rejected by the accounting officers of the Treasury on the report of the Adjutant-General that "the official records failed to show that they (these troops) were in any way under the orders of the officers of the Army."

In his petition to this court the claimant demands \$870.

IV.

Three hundred dollars would be a fair compensation for the whole claim.

BY THE COURT.

Filed April 25, 1887.

A true copy.

Test: This 8th day of September, A. D. 1888.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

In the Court of Claims, December term, 1884-'85. Congressional case, No. 304. George Keel vs. The United States. Filed May 27, 1885.

To the honorable the judges of the Court of Claims:

The petition of George Keel respectfully represents:

I. That he is a citizen of the United States and a resident of Hamilton County, State of Ohio.

II. That the defendants are indebted unto claimant in the sum of \$370 for quartermaster's stores and supplies furnished by him for the use of the Army of the United

States, for which no receipts were given by the proper officer receiving the same; and in the sum of \$500, for rent of house, stable, and other property, owned and possessed by him in the county of Hamilton, State of Ohio, taken, occupied, and used by the Army of the United States from ——— to ———; and in the sum of \$—— for rent and damage to lands and buildings in the county of Hamilton, State of Ohio, taken, occupied, and used from the 5th day of August, 1862, to the 15th day of September, 1862, by "The Ohio River Defense Militia," a militia force called into active service by the governor of the State of Ohio, and during said period of occupation being under the military orders of the commanding officer of military forces of the Army of the United States in the Department of Ohio, and acting in conjunction with said military forces of the United States.

III. That he presented said claim for quartermaster's stores and supplies to the Quartermaster-General under the act of July 4, 1864, by whom payment was denied; that he presented said claim for rent of house, stable, and other property to the Third Auditor of the Treasury, and the same has been disallowed by the Third Auditor and Second Comptroller; that he presented his said claim for rent and damage to property to the Secretary of War, by whom payment was denied.

IV. That he therefore presented said claim to the Forty-eighth Congress, and, while pending therein in the House of Representatives, and before the Committee on War Claims thereof, they were referred to this court under the act of March 3, 1883.

V. That your petitioner has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the United States; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that he is justly entitled to the amount therein claimed from the United States, after allowing all just claims and set-offs; and therefore prays that, in accordance with the provisions of said act, a report be made by this honorable court to the said committee of the facts in the case for its consideration, and for such other or further relief as your petitioner may be entitled to in the premises.

GEORGE KEEL,
By J. F. KINNEY,
His Attorney in Fact.

J. F. KINNEY,
J. T. POWER,
Attorneys of Record.

Post-office address of: Claimant, Cincinnati, Ohio; J. F. Kinney, Cincinnati, Ohio; J. T. Power, Washington, D. C.

STATE OF OHIO, *County of Hamilton, ss:*

Before me, a notary public in and for said county and State, personally appeared J. F. Kinney, who, being duly sworn, says he is the attorney in fact of George Keel, and has for him and in his name subscribed the foregoing petition, and that he believes the facts as stated therein to be true.

J. F. KINNEY.

Sworn and subscribed before me this 5th day of May, 1885.

D. S. VANPELT,
Notary Public, Hamilton County, Ohio

Your committee report back the bill and recommend its passage.

JULIA HOOD.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, of Tennessee, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 1096.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1096) granting a pension to Julia Hood, submit the following report:

It appears from the affidavit of the claimant, Julia Hood, that she was employed as a nurse in hospital No. 5, at Louisville, Ky., from June 16, 1862, to August 8, 1862, and at No. 11 from October 10 to November 10, 1862, and that she has been for the past ten years an invalid and for three years confined to her bed, and entirely dependent upon her daughter for support.

The records of the War Department show that Mrs. Hood was on duty as nurse in No. 5 General Hospital, Louisville Ky., during February, 1862, and also from about June 13, 1862, to August 8, 1862, and that Mrs. Julia Hood was on duty at No. 11 General Hospital from about October 17, 1862, to November 7, 1862; the dates of assignment and discharge do not appear of record.

Sallie M. Kirklighter and Mrs. Laura Macpherson, of Louisville, Ky., testify that they have known the petitioner for seventeen years, and known that she has no property nor income, but is entirely dependent on her daughter for support; that Mrs. Hood has been an invalid for ten years and confined to her bed for fully three years.

CLAIMS OF THE SHAWNEE AND DELAWARE INDIANS.

JUNE 3, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. ENGLISH, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 6591.]

The Committee on Indian Affairs, to whom was referred House bill 6591, beg leave to report:

By an act approved October 1, 1890, the claims of the Indians mentioned in the bill were referred to the Court of Claims. These were for a balance of money alleged to be due to said Indians arising from the sale of lands. It is found that a legitimate claim is made for the remainder of the lands that are unsold, it seeming to be doubtful whether the act referred to covers the latter, and the object of the bill is to unite the claims in one action in order to save expense to all the parties litigant.

The bill has been drawn up to cover the suggestions of the United States Attorney-General, and the committee recommend its passage.



FORFEITURE OF CERTAIN LANDS.

JUNE 3, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. TUCKER, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany S. 1380.]

The Committee on the Public Lands, to whom was referred the bill (S. 1380) amendatory of an act entitled "An act to forfeit certain lands heretofore granted for the purpose aiding in the construction of railroads, and for other purposes," respectfully report:

This measure is recommended by the Secretary of the Interior, and is intended to extend the time for persons actually residing upon lands forfeited by the legislation aforesaid to purchase the same according to the terms provided in said legislation. Your committee find that in many cases the settlers on said lands were prevented from making payment by reason of delays on the part of the Government in adjusting the conflicts of overlapping grants, and in formulating instructions and regulations to the local land offices in executing the terms of said forfeiture.

Your committee therefore recommend the passage of the Senate bill 1380, and report the same back, and further recommend that a like measure (H. R. 5110), which we also report back to the House, be laid upon the table.

DEPARTMENT OF THE INTERIOR,
Washington, January 23, 1892.

SIR: I am in receipt, by reference, of Senate bill No. 1380, "to amend an act entitled 'An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes,'" upon which you request the views of this Department.

I submitted said bill to the Commissioner of the General Land Office, a copy of whose report thereon is herewith transmitted.

I see no objection to the passage of said bill.

Very respectfully,

JOHN W. NOBLE,
Secretary.

Hon. J. N. DOLPH,
Chairman Committee on Public Lands, United States Senate.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 16, 1892.

SIR: I have to acknowledge the receipt by reference from the Department for report, in duplicate, of Senate bill 1380, "to amend an act entitled 'An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes.'"

In reply I have to report that Congress, by act of September 29, 1890, first section, declared forfeited to the United States all lands theretofore granted to any State, or to any corporation, to aid in the construction of a railroad opposite to and co-terminus with the portion of any such road not then completed and in operation, and declared all such lands to be a part of the public domain, excepting the right of way and station grounds theretofore granted.

The third section of said act provided that certain persons who were in possession of any of the forfeited lands under contract with or license from the State or corporation to which the grant thereof was made, or its assigns, executed prior to January 1, 1888, or who settled said lands with the bona fide intent to secure title thereto from the State or corporation when earned by compliance with the law, should be allowed to purchase the same from the United States, in quantities not exceeding 320 acres to any one person, at the rate of \$1.25 per acre, *at any time within two years from the passage of the act.*

By act approved February 18, 1891 (26 Stat., 764), the act of September 29, 1890, was so amended that the period within which settlers, purchasers, and others under the provisions thereof might make application to purchase or move to perfect homestead entries which were preserved or authorized thereby should begin to run from the date of the promulgation by this office of instructions to the local land officers for the disposal of the forfeited lands. The instructions for the restoration and disposal of the lands were promulgated by this office in February, 1891, and under the provisions of the act of February 18, 1891, aforesaid, the time within which persons claiming the right of purchase under the forfeiture act must have completed their claims will expire in February, 1893.

Senate bill 1380 proposes to extend the time until September 19, 1893. As it does not appear how anyone can be injured by such extension, and as it may be the means of enabling some persons to pay for the lands settled upon and acquire title who might not be able to do so within the time now prescribed, I can see no objection to the passage of the bill, the copy of which, referred by the Department, is herewith returned.

Very respectfully,

THOS. H. CARTER,
Commissioner.

The SECRETARY OF THE INTERIOR.

O

MARY C. SMITH.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. VAN HORN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7843.]

The Committee on Invalid Pensions have considered the bill (H. R. 7843) granting a pension to Mary C. Smith, and submit the following report:

Michael Smith enlisted in Company C, One hundred and twenty-fifth New York Infantry, August 9, 1862, and was discharged November 14, 1862; he died October 1, 1863; his widow was pensioned to the date of her death in December, 1885. The petitioner, Mary C. Smith, is 41 years of age. It is shown in evidence that when she was 5 or 6 years of age she had a fall into a cellar, since which time her mind has been a wreck, and her physical condition such that she is unable to care for herself and has been dependent on others for her maintenance; that she is supported by a sister who has to work to provide for her.

These facts are testified to by James H. Carlin, Michael Carroll, Adelia Caulfield, Patrick Cannon, Edward Heffern, and Charles McDermott, of Troy, N. Y., and by a numerous signed petition.

John Walsh, pastor of St. Peter's Church, Troy, N. Y., certifies under seal of the church that Mary C. Smith is now without means of support, is physically and mentally enfeebled, is utterly unable to care for herself or secure her own support, and for the present is entirely dependent on her sister, Margaret C. Smith, for her care and maintenance.

F. A. McGowan, of St. Augustine's Church, Lansingburg, N. Y., certifies under seal of the church that the petitioner is in a physical condition much debilitated and is without means of support. She is an object of pity, and actually appeals to any authority on the score of humanity.

Dr. Geo. H. Billings, of Cohoes, N. Y., testifies that he has known the petitioner since her childhood; knew her father; that while a little girl she incurred an injury to spine and head from a fall, as a result of which she is now unable to care for herself in any way; mind very weak; loss of memory; requires constant watching. She is entirely dependent for support on her sister, Miss Margaret Smith, who is compelled to work for a collar factory, and but for friendly assistance occasionally given they would suffer for necessities of life.

Dr. Michael Keenan, of Troy, N. Y., testifies that he has examined the petitioner and finds her physically weak and anæmic, with great impairment of memory; can not tell her age nor family history; is nervous, timid; given to laughter or weeping for slight cause; condition borders on idiocy; she has no means of support and is dependent upon a sister, who works in a shop for a living; her disability is of long standing, permanent, and incurable.

Your committee recommend the passage of the bill.

LOUISA B. SHARP.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PEARSON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 6563.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6563) granting a pension to Louisa B. Sharp, submit the following report:

The petitioner was the widow of John B. Sharp, who served in Company F, Eighteenth Missouri Infantry, from August 10, 1861, to April 6, 1862, when killed in battle, being then a first lieutenant. The widow was pensioned at \$17 per month to September 9, 1866, when she remarried; a child of the soldier drew pension from that date until June 4, 1871 (when 16 years of age), since which date no pension has been paid.

It appears from a certified copy of the decree that the petitioner was on March 21, 1874, divorced from her second husband, Samuel C. Williams, and was restored to her former name of Louisa B. Sharp, the court finding that "the defendant had been willfully guilty of gross neglect of duty towards said petitioner."

Mrs. Theresa Stanford, of Norwalk, Ohio, testifies that she has been a neighbor of the petitioner for twenty-two years; that the petitioner "has no visible means of support and is poor; that she has subsisted by her own labor when able to work; for the past five years her health has been broken down and she has been unable to labor.

Mr. Franklin Sawyer, of Norwalk, Ohio, states in a letter on file with this committee that the petitioner was a patriotic woman who accompanied her husband, the soldier, to the field; that for many years she has been a great sufferer through ill health and poverty, and that she has been assisted by the township, out of funds raised by State tax for this purpose; that her divorce in nowise affects her character, as her second husband abandoned her without cause.

In view of the facts above set forth your committee recommend that the bill do pass.

EDITH S. READ.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KRIBBS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8552.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 8552) granting a pension to Edith S. Read, have examined the same and report:

The beneficiary is the widow of Ogden B. Read, who was captain of Company F, Eleventh Infantry, U. S. Army. His death was by suicide, and the verdict of the coroner is that—

Capt. Ogden B. Read came to his death from the effect of a pistol wound inflicted by his own hand, on the night of April 13, 1889, while laboring under a fit of temporary insanity.

The pension laws cover cases of this kind, but the rulings of the office are such as to make it impossible for a claimant to furnish the proof demanded in reference to the cause and character of the mental derangement. It is not sufficient to show that the soldier was insane at the time he committed the act, and that the insanity was the result of his service in the line of duty.

This soldier served in the late war of the rebellion, after which he was appointed to a place in the regular Army, making a continuous service, from 1862 to 1889, of twenty-seven years. His qualifications and character are highly indorsed by Maj. Gen. Schofield, Generals Schwan, Augur, Wilcox, and Col. Lawton, Inspector-General U. S. Army, and all of them join in urging special legislation for the relief of his widow and children. Gen. Augur says:

He was faithful and efficient, and of exemplary habits; his wife and children are destitute.

In the opinion of the committee this officer's death, notwithstanding he took his own life, was a result of his service. He had served continuously over twenty-seven years in the Army and had he lived a few months longer would have been entitled to retirement for length of service. He was exemplary, faithful, and of good reputation. He was temporarily irresponsible. His dementia was not the result of vicious habits, and the committee see no necessity for going outside of his service to seek the cause of his death. He frequently complained of suffering from the effect of sunstroke received in the service.

Your committee are convinced that his death may be properly connected with his service and that his wife and children should be pensioned according to his rank.

The bill is reported favorably with a recommendation that it do pass, after being amended by striking out all of the bill after the word "Army," in line 8.

ANNA M. HOLSTEIN.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KRIBBS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8316.]

The Committee on Invalid Pensions have considered the bill (H. R. 8316) granting a pension to Anna M. Holstein, an army nurse, and submit the following report:

The petitioner states that she served voluntarily and without compensation in the field hospitals of the Army of the Potomac from the battle of Antietam, September, 1862, until July 3, 1865. The records of the War Department show that Mrs. H. M. Holstein, who is unquestionably identical with this petitioner, was appointed matron in chief of the General Hospital, Camp Letterman, Gettysburg, Pa., August 11, 1863; the name of Mrs. Anna H. Holstein also appears of record as a nurse at City Point, Va., in July, 1864.

Ex-Governor A. G. Curtin, of Pennsylvania, certifies that Mrs. Holstein served in connection with the hospitals from 1862 to 1865, and gave devoted and useful service to the care of the sick and wounded. The fact that she rendered exceptionally valuable services, extending over a long period of time, is shown by numerous original letters and documents written during the war, and also by innumerable letters and affidavits from officers and surgeons who had personal knowledge of the facts, among them being ex-Governor Beaver, Dr. Justice Darneille, Col. Edward Jay Allen, Dr. J. E. West, Dr. H. C. May, Dr. T. O. Cornish, Capt. John C. Hilton, Dr. C. N. Chamberlain, and others.

It is also shown that Mrs. Holstein is in needy circumstances and without means of support.

Your committee recommend that the bill be amended by striking out the word "forty" in the sixth line, and inserting in lieu thereof the word "twelve," so that the amended bill shall read, "pay her a pension of \$12 per month," etc.

With this amendment your committee report the bill favorably with the recommendation that it do pass.

MARGARET HYATT.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KRIBBS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 4875.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4875) granting a pension to Margaret Hyatt, having had the same under consideration, submit the following report:

The claimant was an army nurse during the late war. The records of the War Department show that Margaret Hyatt was attached to Carver General Hospital, Washington, D. C., April 5, 1864, as a nurse, and was discharged March 24, 1865. The claimant in her affidavit sets forth that in addition to the above service she served without pay as a nurse during 1862 and 1863 in the navy-yard hospital at Annapolis, and that she is in destitute circumstances and is without means of support other than her own labor and the assistance of friends.

Mrs. Mary A. McKee, of Trenton, N. J., writes as follows:

Having served as chief of female nurses at Carver General Hospital from October 19, 1863, to June 30, 1865, I bear cheerful testimony to the capacity, ability, and fidelity of Margaret Hyatt.

Mr. J. B. G. Kinsloe, an editor of a paper at Lock Haven, Pa., writes:

I can bear cheerful testimony to the tender care, aptness, and ability of Margaret Hyatt as a nurse at Carver General Hospital, Washington, D. C., during the illness of my brother (now deceased). I not only heard words of gratitude and blessing from the sick and dying, but witnessed her great concern for patients in her ward.

It has also been stated to your committee, in writing, that the claimant organized a relief corps, with the aid of Washington friends, for the relief and comfort of Confederate prisoners confined in the Old Capitol prison during the war, and out of her own means contributed to their comfort. Among other testimony to her worthiness is an affidavit of James P. Stoughton, who testifies that he has lived near the claimant for seven years, and that to the best of his knowledge and belief she owns no property and is dependent upon friends and her own labor for support.

The committee recommend that all that part of the bill following the title and preceding the enacting clause be stricken out, and that the word "thirty" in line 5 be stricken out and the word "twelve" inserted in lieu thereof, so that the bill will read "at the rate of twelve dollars per month," and that so amended the bill do pass.

MARTIN McDERMOTT.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HARRIES, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7305.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 7305) granting a pension to Martin McDermott, submit the following report:

The petitioner is the son of Michael McDermott, who served in Company I, One hundred and sixtieth New York Infantry, from November 21, 1861, until July 28, 1863, when he died in the service. The soldier's widow, the mother of this petitioner, was pensioned from the date of the soldier's death until her death, which is shown to have occurred January 20, 1892.

The petitioner alleges that he is 53 years of age, and is totally blind, and has resided with his mother all his life, and was supported by her from her pension money until her death; that he has no property of any kind and is unable to support himself, and is dependent on friends. The witnesses state that he became blind when he was 14 or 15 years of age. The fact that the petitioner is totally blind, that he has no property, that he is dependent on others, and that he is the son of the soldier above referred to, is shown by the testimony of John Burns, of Pleasant Grove, Minn.; Mary Callaghan, of Rochester, Minn.; Michael Burns, of Rochester, Minn.; and Patrick Kelly, of High Forest, Minn.

Your committee recommend that the bill do pass.

DR. FRENCH W. THORNHILL.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HARRIES, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 6030.]

The Committee on Invalid Pensions have considered the bill (H. R. 6030) granting a pension to Dr. French W. Thornhill, and submit the following report:

Dr. French W. Thornhill, of Spring Valley, Minn., is the son of Maj. S. P. Thornhill, deceased, a surgeon of the Eighth Wisconsin Volunteer Infantry.

The said Dr. French W. Thornhill was in the years 1861 and 1862 present with said regiment, although not mustered into the United States military service, and assisted and rendered valuable and efficient service, acting as assistant to his father in caring for the sick and wounded.

He was with said regiment in the following engagements: Iron Mountain Bridge, Missouri; Frederickstown, Mo.; Fort Henry, Fort Donelson, New Madrid, Island No. 10, Pittsburgh Landing or Shiloh, Farmington, and Iuka Springs. After the battle of Iuka Springs, the said Dr. French W. Thornhill, by order of Gen. Rosecrans, was sent back to take charge of a neutral hospital, where he remained until the battle of Corinth, where he received, while in the discharge of his said duty as acting assistant surgeon of said regiment, a gunshot wound in his right hip from a rifle ball, whereby he was disabled.

The evidence also shows that the Dr. French M. Thornhill, at the battle of Farmington, from exposure and overexertion in rendering aid and caring for the sick and wounded, received and sustained a sunstroke and contracted dysentery and chronic diarrhea, and is now greatly disabled.

Your committee believe this to be a meritorious case, and recommend that the bill do pass, with the following amendments:

Strike out all after the word "rate," in line 6, and insert in lieu thereof the words, "of seventeen dollars per month on account of gunshot wound of right hip, received at the battle of Corinth."

MARY DANAHAY.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CURTIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8409.]

The Committee on Invalid Pensions have considered the bill (H. R. 8409) granting a pension to Mary Danahay, and submit the following report:

The records of the War Department show that Daniel Danahay served in Company E, Thirty-fifth New York Volunteers, from June 30, 1861, to June 5, 1863; again enlisted August 10, 1863, in Company H, Eighteenth New York Cavalry, and was killed in action May 17, 1864. He left a widow, Margaret (Cronin), to whom he was married July 7, 1863. She applied for pension, which was granted February 10, 1865, at \$8 per month.

On March 26, 1866, this petitioner filed a claim as mother of this soldier, alleging that he contributed to her support; that he left no child surviving, and that his widow, Margaret, had remarried, November 7, 1865. The mother's claim was rejected on the ground that the soldier left a widow surviving him. The mother is now about 80 years of age and is a widow, her husband having died at the age of 81 years.

There are on file seven letters written by the soldier in 1861 and 1862 from the Army to his parents, in which he mentions sending them money aggregating \$135.

In an affidavit executed January 28, 1869, Richard Wall testifies that he knew Mary Danahay and her son Daniel Danahay, deceased, of Company H, Eighteenth New York Cavalry; and that he knew the soldier's handwriting and that the letters above referred to are genuine, and that he believes she was dependent on the son for support.

J. B. Ainsworth in 1869 testified that the petitioner's husband was taxed for property valued at only \$100, and that so far as he knew he had no other taxable property.

Dr. W. J. Bulger, of Oswego, N. Y., testifies that the petitioner is now about 80 years of age, feeble and diseased, possessed of no property whatever and dependent on the charity of others for support.

Your committee recommend the passage of the bill.

MARY A. WISE.

JUNE 3, 1892.—Indefinitely postponed and ordered to be printed.

Mr. McKINNEY, from the Committee on Invalid Pensions, submitted the following

ADVERSE REPORT:

[To accompany S. 1143.]

The Committee on Invalid Pensions have considered the bill (S. 1143) granting a pension to Mary A. Wise, which was passed by the Senate May 2, 1892, and submit the following report:

Peter Wise served as captain of Company I, Eighteenth Pennsylvania Cavalry, from December 9, 1862, to August 27, 1863, and was pensioned at \$20 per month, on account of an injury to the abdomen, until the time of his death, April 18, 1890. The widow's claim for pension under the general law was rejected by the Pension Bureau, in November 1891, on the ground that the soldier's death from a carbuncle on his neck was not a result of his military service.

If the widow is dependent she can receive a pension of \$8 per month under the act of June 27, 1890, but it does not appear that she has ever made such an application. The object of the bill under consideration is to give the widow a pension of \$20 per month.

It has been the settled policy of this committee not to favorably consider bills for the relief of persons who have not availed themselves of such opportunities as were offered them under the provisions of the general law.

The provisions relating to widows' claims in the act of June 27, 1890, were enacted for the express purpose of giving some relief in those cases where it was not possible to prove that the soldier's death was a result of his military service, and the fact that this petitioner has not seen fit to avail herself of the benefits offered by that law would, of itself, seem sufficient to justify an adverse report on this bill; furthermore the question whether the carbuncle, which in this case caused the soldier's death, was or was not a result of the wound for which he was pensioned is a question purely medical and clearly within the province of the Pension Bureau to determine, and for properly determining such questions the Bureau has extensive and presumably ample facilities.

Your committee therefore recommend that the further consideration of this bill be indefinitely postponed.

KATIE ALLEN.

JUNE 3, 1892.— Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8693.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 8693) granting a pension to Katie Allen, have had the same under consideration and submit the following report:

The claimant is the widow of Albert L. Allen, who was pensioned by special act of Congress dated April 27, 1886, and who died April 19, 1890. The widow made application for pension to the Pension Bureau, but it was rejected on the ground that the records did not show that he was regularly enlisted in the United States service.

The evidence upon which the special act was based, which is necessary to a right understanding of this case, is as follows:

The evidence on file in this case shows the following facts: That during the war claimant was a Government agent, under the direction of Lyne S. Metcalfe, then in charge of Government stores at the St. Louis depot; that he was ordered to and took charge of the quartermaster's stores, then embarked on the Government transport steamer *Venice*, and conducted the same from St. Louis to Johnsonville, on the Tennessee River, in Tennessee; that while returning from said duty, having taken on board at Johnsonville a detachment of troops commanded by one Lieut. Gibson, of the New Jersey troops, as they were approaching Paris, Tenn., on October 30, 1864, the *Venice* and consort were fired into by Confederate troops under Gen. Forrest; that Lieut. Gibson ordered every man on board to fight till all should be killed, and enforced his order with drawn revolver; that all took arms and fought from 10 a. m. to 4 p. m., nine men being killed and many wounded; that claimant fought with a musket and was shot through the right shoulder and right foot, and was permanently disabled. The vessels were captured and most of the wounded carried off as prisoners, but the surgeon said that claimant would die, and could not be removed, whereupon Gen. Forrest paroled him. Claimant was neglected for five days, and lay helpless with his wounds undressed until they became offensive, and he has been disabled ever since.

R. M. Kerley, M. D., makes the following certificate, dated February 10, 1892:

This is to certify that I attended Albert L. Allen in his late illness, who died on April 19, 1890. The immediate cause of death was uræmia, the result of prostatitis and a suppurating wound of the right foot. The cause of the suppuration was necrosis of the bones of the foot, causing blood poisoning. The wound and the prostatitis were the combined causes of death.

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CAPT. GEORGE W. HAZZARD.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

R E P O R T:

[To accompany H. R. 8780.]

The Committee on Invalid Pensions, to whom was referred House bill 8780, beg leave to make the following report:

Mrs. Mary E. White drew a pension of \$20 per month under certificate 3598 of Pension Office as widow of Capt. George W. Hazzard, from August 14, 1862, until October 7, 1874, the date of her second marriage.

On January 12, 1884, she became a widow the second time, and now asks that she be restored to the pension roll at \$20 per month.

Mrs. White has no means of support save her own labor. She is advanced in age, physically infirm, and has an invalid daughter entirely dependent upon her for a support. For these reasons your committee recommend that the bill do pass, amended, however, by adding at the close of the bill the words "from and after the passage of this act."

Amend the title also so as to read "A bill to restore to the pension roll Mary Eleanor White, as former widow of Capt. George W. Hazzard."

ADOLPH VON HAAKE.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 1445.]

The Committee on War Claims, to whom was referred the bill (S. 1445) for the relief of Adolph von Haake, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Military Affairs of the present Congress, a copy of which is hereto appended as a part of this report.

Your committee concur in the conclusions stated in that report, and recommend the passage of the bill.

[Senate Report No. 611, Fifty-second Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 1445) entitled "A bill for the relief of Adolph von Haake," have had the same under consideration and report it back favorably, amended, and recommend its passage.

The petitioner asks that he be allowed and paid the difference of pay and emoluments between major and captain of infantry from August 8, 1863, to June 10, 1865, less any pay and emoluments received by him during that period, and such was the tenor of the bill as originally introduced.

Von Haake was mustered as captain in the Sixty-eighth New York Volunteer Infantry January 25, 1863, and was taken prisoner at Gettysburg July 1, 1863, and confined at Richmond and Macon, and discharged March 4, 1865, reporting at Camp Parole, at Annapolis, Md., and there granted sick leave and mustered out June 10, 1865.

While a prisoner of war and on November 12, 1863, he was commissioned a major, to take rank August 8, 1863, but being a prisoner of war could not be and was not actually mustered. He made his application to the War Department for recognition as major, under act of June 3, 1884, and by some process of reasoning he was allowed and paid as such from November 12, 1863, to March 3, 1865. He subsequently made application under act of February 3, 1887, for pay as major from August 8, 1863, which was refused, the regiment then being below the number entitling it to three field officers. The next vacancy when he could have been mustered occurred October 25, 1863.

Your committee are of the opinion that Maj. Von Haake is equitably entitled to pay and emoluments from said last-mentioned date to the time (November 12, 1863) he was first recognized as entitled by the War Department, and are likewise of the opinion that he is also entitled from the date of his discharge from prison, March 4, 1865, to the date of his muster out, June 10, 1865, and your committee accordingly report the bill back amended so as to read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay Adolph von Haake, out of any money in the Treasury not otherwise appropriated, the difference of pay and emoluments between major and captain of infantry from October twenty-fifth, eighteen hundred and sixty-three, to November twelfth, eighteen hundred and sixty-three, and from March fourth, eighteen hundred and sixty-five, to June tenth, eighteen hundred and sixty-five, deducting therefrom the pay and emoluments received by him during the period aforesaid."

CHARLES W. CRONK.

JUNE 3, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 653.]

The Committee on War Claims, to whom was referred the bill (S. 653) for the relief of Charles W. Cronk, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Naval Affairs of the present Congress, a copy of which is hereto appended and made a part of this report.

Your committee concur in the conclusions stated in that report, and recommend the passage of the bill.

[Senate Report No. 601, Fifty-second Congress, first session.]

The Committee on Naval Affairs, to whom was referred the bill (S. 653) for the relief of Charles W. Cronk, have had the same under consideration and beg leave to report it back and recommend its passage for the reasons given in the appended letter of the Acting Secretary of the Navy:

NAVY DEPARTMENT,
Washington, March 18, 1890.

SIR: I have the honor to return herewith the petition of Charles W. Cronk, late an acting first assistant engineer in the Navy, asking to be allowed three months' extra pay on account of his service in the war of the rebellion, and to furnish the following statement, in compliance with your request for information and suggestions relating thereto, viz:

Charles W. Cronk was appointed an acting second assistant engineer in the Navy October 10, 1863, but the appointment was revoked on the 17th of that month on account of an injury he had received which prevented him from reporting for duty, and he was informed that upon his furnishing the Department with a medical certificate of recovery from the effect of such injury his appointment would be renewed.

Mr. Cronk was reappointed an acting second assistant engineer November 21, 1863, and on the 29th of October, 1864, was promoted to the grade of acting first assistant engineer. Under date of July 27, 1865, Mr. Cronk was detached from the U. S. S. *Naubuc* and given two months' leave of absence, to take effect from the date of the receipt by him of the order granting the same, and notified that if at the expiration of such leave of absence his services were no longer required he would be honorably discharged from the service. The order detaching Mr. Cronk from the *Naubuc* and granting him leave of absence was not delivered to him, as appears from the papers accompanying his petition, until September 13, 1865, and as he was ordered to duty again on the 20th of that month, he had only seven days' leave thereunder.

Mr. Cronk remained in the service as an acting first assistant engineer until December 22, 1868, when he was honorably discharged from the service, and informed by letter of that date that the leave of absence granted him in 1865 was all the leave

to which he was entitled, but said letter seems to have been written upon the supposition that Mr. Cronk had had all the leave to which he was entitled under the order of July 27, 1865, the Department not having been informed as to the date of the receipt by him of that order.

It appears, therefore, that Mr. Cronk, through circumstances beyond his control, failed to receive the leave of absence with pay which, in accordance with the practice of the Department, was granted to volunteer officers of the Navy prior to their honorable discharge from the service, viz, one month for each year, or portion of a year greater than six months, of service rendered prior to May 1, 1865. This practice was adopted by this Department in consequence of the passage of an act of Congress, approved March 3, 1865, allowing to officers of the volunteer Army who remained in the service until the close of the late war three months' extra pay on being mustered out of the service.

The petition of Mr. Cronk is recommended to the favorable consideration of the committee.

Very respectfully,

F. M. RAMSAY,
Acting Secretary of the Navy.

Hon. J. R. MCPHERSON,
Committee on Naval Affairs, United States Senate.

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PUBLIC BUILDING AT TAMPA, FLA.

JUNE 3, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BANKHEAD, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany S. 79.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (S. 79) entitled "A bill for the erection of a public building at Tampa, Fla.," having considered the same, recommend that it pass with the following amendment thereto, viz:

In line 12 of page 2 of Senate printed bill, strike out the words "and forty" so that the amount to be expended on said building shall read "one hundred thousand dollars."

The committee deem it advisable to append hereto the report of the Committee on Public Buildings and Grounds of the Senate on said bill, and in addition to the statement of post-office receipts for fiscal year ending June 30, 1889, at Tampa, set forth in said report, would call attention to the receipts from customs and internal revenue at Tampa for the fiscal year ending June 30, 1891, which aggregate nearly \$400,000, not including the sum of \$237,000 collected on goods passed through Tampa in bond.

The committee have thought proper to amend the Senate bill by reducing the amount to be expended in erecting said building from \$140,000 to \$100,000, in the belief that with some slight modifications of the computations that have been made with reference to said building the smaller sum will suffice for the object sought.

[Senate Report No. 12, Fifty-second Congress, first session.]

The committee recommend that this bill pass, with an amendment reducing the amount appropriated from \$150,000 to \$140,000, and submit in support of the same the following:

TREASURY DEPARTMENT, OFFICE OF THE SUPERVISING ARCHITECT,
Washington, D. C., March 24, 1890.

SIR: The letter from your committee dated December 14, 1889, requested an official report from this office upon Senate bill 248, introduced December 4, 1889, by Hon. Samuel Pasco, to provide for the erection of a public building for the accommodation of the United States courts, custom-house, post-office, and other Government offices, in Tampa, Fla., on that portion of the public lands of the United States, situated at Tampa, known as "Fort Brooks Military Reservation," not less than 3, nor more than 5 acres, to be designated by the Secretary of the Interior as a site therefor, at a cost not to exceed \$150,000.

In reply I have the honor to submit the following:

Copy of a report dated January 24, 1890, addressed to this office by the honorable the Attorney-General, inclosing copy of a report dated December 28, 1889, addressed to him by the United States marshal for the southern district of Florida.

Copy of a report dated December 30, 1889, addressed to this office by the honorable the Postmaster-General.

Copy of a report dated March 17, 1889, addressed to this office by the postmaster of Tampa, Fla.

Copy of a report dated December 24, 1889, addressed to this office by the honorable the Commissioner of Customs.

Copy of a report dated January 10, 1890, addressed to this office by the collector of customs at Tampa, Fla.

By reference to page 993, Report of the Postmaster-General, 1889, it will be observed that the gross postal receipts in said city for the fiscal year ending June 30, 1889, were \$6,926.14; the salary, clerk hire, rent, light, and fuel, and other incidental expenses aggregated \$2,821.69; the net postal receipts were \$4,104.45, and that, in addition to said post-office being self-sustaining, it yielded a net postal revenue of 59 per cent.

In the papers above cited the United States marshal estimates 4,500 square feet for the court room proper and the court officers, the collector of customs estimates 3,000 square feet of floor area for the officers of the customs service, and the postmaster estimates 4,000 square feet of floor area for the postal service, for the proper conduct of the present and of the prospective business in the next ten years.

The area of building is fixed by the requirements of the rooms for the United States courtroom and its officers.

From computations made based upon the data received it is found that a public building for the accommodation of the officers of the judiciary and of the customs and postal service, of about 5,000 square feet of floor area, built of brick, with stone trimmings, of fireproof construction, including heating apparatus, vaults, approaches, and elevator service, three stories high, with basement, can be erected on said Government reservation for about \$140,000, or \$10,000 less than the limit of cost proposed by said Senate bill, namely, \$150,000.

Respectfully, yours,

JAMES H. WINDRIM,
Supervising Architect.

HON. LELAND STANFORD,

Chairman Committee on Public Buildings and Grounds, United States Senate.

This report will not be extended so as to include the communications upon which the Supervising Architect based his recommendations, but the committee, in view of the fact that the United States courts and the custom-house require accommodation besides the post-office and that Tampa is fast becoming a commercial point of great importance, favor the erection of the proposed building. But, as the Supervising Architect finds that such a building as is required can be erected for \$10,000 less than the amount mentioned in the bill, they recommend that the bill be amended before its passage as follows:

On page 2, in lines 9, 12, and 18, omit "fifty" and insert "forty."

POST-OFFICE BUILDING AT MAMMOTH HOT SPRINGS.

JUNE 3, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MILLIKEN, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany S. 426.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (S. 426) to provide for the erection of a post-office building at Mammoth Hot Springs, Yellowstone National Park, submit the following report:

The business of this post-office has increased twenty-fold since 1882. Over 10,000 visitors from the United States and other countries, also the soldiers of Camp Sheridan, the Army Engineer Corps, the U. S. Geological Survey, and the employes of the park hotels have their mail addressed to this office. A distribution of mail is made up in it covering a territory of nearly 6,000 square miles.

The building now used is a dirt-covered log cabin, through the roof of which the rain and mud pour down during every storm, making it impossible to protect the public property, stamps, and mail matter that accumulate in it.

In view of the importance of this great national and cosmopolitan park, with the rapid increase of mail matter and the entire inadequacy of the unsightly shack now used, your committee respectfully recommend the passage of the accompanying bill with the following amendment:

Strike out "ten thousand" and insert "seven thousand five hundred."

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SWAMP-LAND GRANTS.

JUNE 3, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. McRAE, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany H. R. 9072.]

The Committee on Public Lands, to whom was referred the bill (H. R. 9072) to finally adjust and settle the claim of Arkansas and other States under the swamp-land grants, and for other purposes, report the same back to the House with the recommendation that it do pass.

The act approved March 2, 1849 (9 Stat. L., 352), granted to the State of Louisiana the whole of the swamp and overflowed lands in said State found unfit for cultivation, with the exception of those tracts fronting on rivers, creeks, bayous, etc., surveyed into lots or tracts under the acts of March 31, 1811, and May 24, 1824. (See Appendix A.)

The act of September 28, 1850 (9 Stat. L., 519), (see Appendix B), granted to the public-land States then in the Union the whole of the swamp and overflowed lands remaining unsold within their limits made unfit thereby for cultivation, and the Secretary of the Interior was, by the second section of said act, plainly directed to make out accurate lists and plats of the swamp lands and transmit the same to the governors of the States interested. He failed to make such selections and segregation of the lands granted. This failure or neglect has been the source of a great deal of controversy between the States and the Interior Department, and also of much vexatious and expensive litigation between those claiming under the grant and those adverse to it.

The Secretary of the Interior, instead of doing what the law intended he should, allowed the States the option of adopting one of two methods, as follows:

(1) The field notes of Government survey to be taken as the basis of selections, and all lands shown by them to be swamp or overflowed within the meaning of the granting act to be placed in the lists to be reported to the General Land Office.

(2) The States to make the selections by their own agents and at their own cost, and report the same to the surveyor-general with the proof of the swampy character of the land.

Alabama, Arkansas, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Ohio, and Wisconsin have adopted method No. 1 and agreed to settle by the field notes.

Florida, Iowa, Illinois, and Missouri have adopted method No. 2 and make selections in the field.

The act approved March 12, 1860, extended the grant of September 28, 1850, to the States of Minnesota and Oregon. California, by the

act approved July 23, 1866, was granted the same character of lands within her limits, but the method of selecting was much simplified in that act, and the adjustment has been much easier than in the other fourteen swamp-land States.

The act of September 28, 1850, granted the whole of the swamp and overflowed lands made thereby unfit for cultivation and unsold at that time to the States. It was an unconditional grant *in presenti* and conveyed to the respective States all such lands. Although the language of the grant is perfectly plain and unambiguous, yet it has been the subject of consideration and construction in various courts, both State and national. The scope and tenor of the decisions will clearly appear from the following quotation from the decision of the Supreme Court of the United States in the case of *Railroad Company vs. Smith* (9 Wall., 95):

The act of September 28, 1850, was a present grant by Congress of certain lands to the States within which they lie, but by a description which requires something more than a mere reference to their townships, ranges, and sections to identify them as coming within it. * * *

By the second section of the act of 1850 it was made the duty of the Secretary of the Interior to ascertain this fact, namely, what tracts were so swampy, overflowed, and wet as that the major parts thereof were unfit for cultivation, and furnish the State with the evidence of it. Must the State lose the lands, though clearly swamp land, because that officer has neglected to do this? The right of the State did not depend on his action, but on the act of Congress, and though the State might be embarrassed in the assertion of this right by the delay or failure of the Secretary to ascertain and make out lists of these lands, the right of the State to them could not be defeated by that delay.

Again, in the case of *French vs. Fyan et al.* (3 Otto, 169), the court said:

This court has decided more than once that the swamp-land act was a grant *in presenti*, by which the title to those lands passed at once to the State in which they lay, except as to States admitted to the Union after its passage.

See, also, in the same line and to the same effect the following cases: *Railroad Company vs. Fremont County* (9 Wallace, 89); *Martin vs. Marks* (7 Otto, 345); decisions of Secretary of the Interior, December 23, 1851 (1 Lester's L. L., 549); April 25, 1862, and opinion of Attorney-General, November 10, 1850 (1 Lester's L. L., 564).

Such have been the decisions of the courts without exception, the latest decision being the case of the United States against Louisiana (127 U. S., 182).

The following quotations are from the able and exhaustive opinion of Justice Field in the case of *Wright vs. Roseberry* (121 U. S., 488).

The object of the grant, as stated in the act, was to enable the several States to which it was made to construct the necessary levees and drains to reclaim the lands; and the act required the proceeds from them, whether from their sale or other disposition, to be used, so far as necessary, exclusively for that purpose. The early reclamation of the lands was of great importance to the States, not only on account of their extraordinary fertility when once reclaimed, but for the reason that until then they were the cause of malarial fevers and diseases in the neighborhood.

The language of the first section of the act indicates a grant *in presenti* to each State of lands within its limits of the character described. Its words "shall be and are hereby granted" import an immediate transfer of interest, not a promise of a transfer in the future. It was only when the other sections of the act were read that a doubt was raised as to the immediate operation of the act. On the one hand, it was contended that these sections postponed the vesting of title in the State until the lands granted were identified and a patent of the United States for them was issued. On the other hand, it was insisted that effect must be given to the clear words of the granting clause of the first section, which, *ex vi termini*, import the passing of a present interest, and that, in consistency with them, the other provisions of the act should be regarded as simply providing the mode of identifying the lands and furnishing documentary evidence of their identification, and not as a

limitation upon vesting the right to them in the State, as this would make the investiture dependent upon the request of the governor, and not upon the act of Congress. It was also urged that identification of the lands could be made in a majority of instances from simple examination of them, and that no policy of the Government could be advanced by postponing the passing of the title until the identification by the Secretary of the Interior; and that the clause providing, that upon the issue of the patent the fee should pass, was merely declaratory of the nature of the title, the patent operating merely by way of further assurance.

The question thus brought to the attention of the Department, under whose supervision the act was to be carried into effect, was one upon which men might very well differ, but after its solution had been reached, and the conclusion was acted upon, necessarily affecting titles to immense tracts of lands, there should be the clearest evidence of error, as well as the strongest reasons of policy and justice controlling, before a departure from it should be sanctioned.

* * * * *

It is plain that the difficulty of identifying the swamp and overflowed lands could not defeat or impair the effect of the granting clause, by whomsoever such identification was required to be made. When identified, the title would become perfect as of the date of the act. The patent would be evidence of such identification and declaratory of the title conveyed. It would establish definitely the extent and boundaries of the swamp and overflowed lands in any township, and thus render it unnecessary to resort to oral evidence on that subject. It would settle what otherwise might always be a mooted point, whether the greater part of any legal subdivision was so wet and unfit for cultivation as to carry the whole subdivision into the list. The determination of the Secretary upon these matters, as shown by the patent, would be conclusive as against any collateral attacks, he being the officer to whose supervision and control the matter is especially confided. The patent would thus be an invaluable muniment of title and a source of quiet and peace to its possessor. But the right of the State under the first section would not be enlarged by the action of the Secretary, except as to land, not swamp or overflowed, contained in a legal subdivision, as mentioned in the fourth section; nor could it be defeated, in regard to the swamp and overflowed lands, by his refusal to have the required list made out, or the patent issued, notwithstanding the delays and embarrassments which might ensue.

The conclusion which the Land Department reached upon its examination of the character of the grant soon after the passage of the act, was that the title passed to the State at the date of the act. In a communication to the Commissioner of the General Land Office, under date of December 23, 1851, Mr. Stuart, then Secretary of the Interior, referring to the act of 1850 and the act of 1849 to aid Louisiana to drain her swamp lands, and stating that the first question involved was as to the period when the grants took effect—whether at the date of the law, or at the date of the approval of the selections by the Secretary—said: “In each case, the granting clause is in the first section, and the words employed, viz, ‘are hereby granted,’ seem to me to import a grant *in presenti*. They confer the right to the land, though other proceedings are necessary to perfect the title. When the selections are made and approved, or the patent issued, the title therefor becomes perfect, and has relation back to the date of the grant.” And, further, “As the grants are regarded as taking effect from the date of the laws making them respectively, and as vesting the inchoate title in the States, it follows that any subsequent sale or location of swamp or overflowed lands must be held to be illegal, and the purchase money refunded, or a change of location ordered.” (Lester’s Land Laws, 549, No. 578.)

This construction of the grant has been followed by the Secretary’s successors to this day. In a communication to the Commissioner of the General Land Office, April 19, 1877, Secretary Schurz said: “The legal character of this grant (of 1850) has often been passed upon by the courts, and it has been uniformly held that the act was a present grant, vesting in the State, *proprio vigore*, from the day of its date, title to all the land of the particular description therein designated, wanting nothing but the definition of the boundaries to make it perfect.” And, therefore, he held that swamp lands were not, in March, 1853, when the preëmption laws were extended to California, public lands, and for that reason could not be entered and sold under those laws. “The act of September 28, 1850,” he added, “was notice to the world that all of the swampy lands in California were thereby granted *in presenti* to the State, and were not subject to preëmption, entry, or sale thereafter; and the person who files a declaratory statement on lands actually swampy does so with full notice that they are not public lands and that he can not obtain any right thereby.” (Copp’s Public Land Laws, Vol. 2, p. 1048.)

In a communication to the Commissioner of February 25, 1886, Secretary Lamar said: “The principle has been formerly established by the decisions of the courts and of this Department that the grant of swamp lands made to the several States was a grant *in presenti*, and conferred a present vested right to such lands as of the

date of the grant, and that the field notes of survey may be taken as a basis in determining the character of the land if the State so selects." (Decisions of Department of Interior, Vol. 4, 415.)

A similar construction of the grant was given by Attorney-General Black in an official communication to the Secretary of the Interior, under date of November 10, 1858. In February, 1853, Congress had made a grant of land to the States of Arkansas and Missouri to aid in the construction of a railroad, and under this grant a part of the lands previously granted to the State of Arkansas by the act of September 28, 1850, under the designation of swamp lands, was included; and the question asked of the Attorney-General was, which of the two acts gave the better title. In reply, he said: "Where there is a conflict between two titles derived from the same source, either of which would be good if the other were out of the way, the elder one must always prevail; *prior in tempore potior est in jure*. This difficulty, therefore, is solved if the mere grant [of 1850], as you call it, gave the State a right to the land from the day of its date. That it did so there can be no doubt. In an opinion which I sent you on the 7th of June, 1857, concerning one of the same laws now under consideration, I said that a grant by Congress does of itself, *proprio rigore*, pass to the grantee all the estate which the United States had in the subject-matter of the grant, except what is expressly excepted. I refer you to that opinion for the reasons and authorities upon which the principle is grounded. It is not necessary that the patent should issue before the title vests in the State under the act of 1850. The act of Congress was itself a present grant, wanting nothing but a definition of boundaries to make it perfect, and to attain that object the Secretary of the Interior was directed to make out an accurate list and plat of the lands and cause a patent to be issued therefor. But when a party is authorized to demand a patent for land his title is vested as much as if he had the patent itself, which is but evidence of his title." (9 Opinions Attorneys-General, 254.)

The same view of the act as a present grant, vesting in the State from its date the title to all the land within its limits of the particular description designated, wanting only a definition of boundaries to render the title perfect, was taken at an early period by the highest courts of several States within which swamp and overflowed lands existed. It was so held by the supreme court of Arkansas in 1859, in *Fletcher vs. Pool*, 20 Ark., 100; in 1866 in *Branch vs. Mitchell*, 24 Ark., 431, 444, and in 1874 in *Ringo's Executor vs. Rotan's Heirs*, 29 Ark., 56.

In *Fletcher vs. Pool* the court said: "That the act was a present grant vesting in the State, *proprio rigore*, from the day of its date, title to all the land of the particular description therein designated, wanting nothing but the definition of boundaries to make it perfect, no doubts can be entertained. The object of the second section was not to postpone the vestiture of title in the State until a patent should issue, but was to provide for the ascertainment of boundaries and to prevent a premature interference with the lands by the State legislature before they were so designated as to avoid mistake and confusion."

In *Branch vs. Mitchell*, the court said: "We continue satisfied with the decisions heretofore made; and again hold that all the lands in the State, which were really and in fact swamp and overflowed, and thereby unfit for cultivation, passed to and vested in the State, on the 28th of September, 1850. The case is the same as if the grant had been of all the prairie land, or all the woodland, or all the alluvial land, in the State; the difficulty of ascertainment of its character not affecting the question. The words of grant, the operative words, are direct and positive: 'Shall be and the same are hereby granted to the State;' and the provision of the second section, that the Secretary of the Interior should make out and transmit to the governor a list and plats of the land described, and at the request of the governor cause a patent to issue to the State; and that "on that patent the fee simple to said lands shall vest in the said State," can no more be held to limit the effect of the present grant in the first section, than if, in a deed, after immediate and express conveyance of lands by some general description, it should be provided that, when the numbers should be ascertained, another deed should be made, 'on which the fee simple should vest.' This would make the title of the State to any of the land depend on the request of the governor for a patent. The words of the second section must be held to be simply a definition of the *nature* of the title which the State took under the grant, and not a postponement of the period at which the title should vest." (Arkansas Rep., vol. 24, p. 444-5.)

And in *Ringo's Executor v. Rotan's Heirs*, the court held that the title of the State to the swamp and overflowed lands granted to her by the act of September 28, 1850, accrued from the date of the act, and that a title derived from the State took precedence over a grant by the United States subsequent to that time.

The same view was held by the supreme court of California in 1858, in *Owens v. Jackson*, 9 Cal., 322; and in *Dickinson v. Somers*, *ibid.*, 554; and in 1864 in *Kernan v. Griffith*, 27 Cal., 87; and in 1882 was assumed to be the correct view in *Sacramento Valley Reclamation Company v. Cook*, 61 Cal., 342. In the first of these cases, which

was an action for the possession of swamp and overflowed land held under a patent of the State, the defendant demurred to the complaint, on the ground that it did not show that the land had been surveyed and patented to the State. The demurrer was sustained in the court below, but the Supreme Court reversed the decision, holding that the State had the right to dispose of lands of that character granted to her by the act of 1850, prior to the patent of the United States. "The act of Congress," said the court, "describes the land, not by specific boundaries, but by its quality, and is a legislative grant of all the public lands within the State of the quality mentioned. The patent is matter of evidence and description by metes and bounds. The office of the patent is to make the description of the lands definite and conclusive as between the United States and the State." The same conclusion was reached in 1861 by the supreme court of Iowa, in *Allison v. Halfacre*, 11 Iowa, 450, which was subsequently followed in all its decisions on the subject.

At a later day the supreme courts of Missouri and Oregon held the same doctrine. (*Clarkson v. Buchanan*, 53 Mo., 563; *Campbell v. Wortman*, 58 *id.*, 258; *Gaston v. Stott*, 5 Oregon, 48.) The supreme court of Illinois, in 1863, expressed the same view in *Supervisors v. State's Attorney*, 31 Ill., 68; then receded from it in *Grantham v. Atkins*, 63 Ill., 259; and, in 1873, in *Thompson v. Prince*, 67 Ill., 281; but returned to its first conclusion, in 1875, in *Keller v. Brickey*, 78 Ill., 133.

* * * * *

The result of these decisions is, that the grant of 1850 is one *in præsenti*, passing the title to the lands as of its date, but requiring identification of the lands to render the title perfect; that the action of the Secretary in identifying them is conclusive against collateral attack, as the judgment of a special tribunal to which the determination of the matter is intrusted; but when that officer has neglected or failed to make the identification, it is competent for the grantees of the State, to prevent their rights from being defeated, to identify the lands in any other appropriate mode which will effect that object. A resort to such mode of identification would also seem to be permissible, where the Secretary declares his inability to certify the lands to the State for any cause other than a consideration of their character.

The legislation of Congress subsequent to the act of 1850, for the purpose of giving it effect, has been in consonance with the view stated of the nature of the grant. It has uniformly recognized the paramount character of the State's title, and has endeavored to correct the evils which in many cases followed from the delay of the Secretary of the Interior in identifying the lands and furnishing to the State the required lists and plats. The legislatures of the several States in which such lands existed very generally themselves undertook to identify the lands and to dispose of them, and for that purpose passed appropriate legislation for their survey and sale and the issue of patents to the purchasers. Much inconvenience, and in many instances conflicts of title, arose between those claiming under the State and those claiming directly from the United States. To obviate this, on the 2d of March, 1855, Congress passed an act "for the relief of purchasers and locators of swamp and overflowed lands." (10 Stats., 634, chap. 147.) The act provided that the President of the United States should cause patents to be issued to purchasers and locators who had made entries of the public lands claimed as swamp and overflowed lands with cash or land warrants, or scrip, prior to the issue of patents to States under the act of 1850, "provided, that in all cases where any State through its constituted authorities may have sold or disposed of any tract or tracts of such land to any individual or individuals, and prior to the entry, sale, or location of the same under the preëmption or other laws of the United States, no patent shall be issued by the President for such tract or tracts until such State through its constituted authorities shall release its claim thereto in such form as shall be prescribed by the Secretary of the Interior."

The act also provided "that upon due proof by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to said State or States, and when the lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like land upon any of the public lands subject to entry at \$1.25 an acre, or less, and patents shall issue therefor upon the terms and conditions enumerated in the act aforesaid."

There is here a plain recognition of the prior right of the State to the swamp lands within her limits, by the declaration that no patent of the United States shall be issued to purchasers from them of such lands without a release from the State, and that, in case of completed purchases from them, the purchase money shall be paid to the State, or if the purchase was made by warrant or in scrip, the State may locate an equal quantity of land upon any other public lands subject to entry. By act of March 3, 1857 (11 Stats., 251, chap. 117), "to confirm to the several States the swamp and overflowed lands selected under the act of September 28, 1850, and the act of March 2, 1849," the act of March 2, 1855, was continued in force and extended to all entries and locations of lands claimed as swamp, made since its passage.

While the act did not by legal subdivisions describe the land so that it could be located, the third section fixed a criterion by which it could be easily ascertained and found, to wit: "All legal subdivisions, the greater part of which is [September 28, 1850] wet and unfit for cultivation." To all such lands the title passed as of the date of the grant.

The failure of the Secretary of the Interior to make the list and plats, and his action in allowing the local land officers to continue to dispose of the lands granted, became such a grievance that Congress passed two remedial acts referred to by Justice Field. The first of these was approved March 2, 1855 (10 Stat., 634), and granted relief to the purchasers and locators of swamp and overflowed lands by giving the States the purchase money for all such lands theretofore sold, and allowing dry lands of like quantity for such as had been otherwise disposed of. This act was not made prospective and continuing, as it ought to have been. (See Appendix C.)

Other difficulties arose about the selections made by the States, and so Congress again, on March 3, 1857 (11 Stat., 251), passed an act declaring that the selections of swamp and overflowed lands granted to the States by the act of September 28, 1850, theretofore made and reported to the General Land Office, so far as the same remained vacant and unappropriated and not interfered with by actual settlement under existing laws of the United States, were confirmed and approved for patent, and it in express terms extended and continued in force until that time the provisions of the act of March 2, 1855. (See Appendix D.)

The status of the grant as it now exists and is construed by the Department may be stated as follows:

(1) The swamp-land States to which the grant applies are entitled to all the swamp and overflowed lands situated therein, as defined in the grant, not disposed of prior to September 28, 1850, the date of the grant.

(2) The said States are entitled to the purchase money for all such swamp lands as were sold by the United States for cash from the date of the grant to March 3, 1857, the date of the last indemnity act.

(3) They are entitled to have dry lands as indemnity for all such swamp lands as were disposed of otherwise than by sale prior to March 3, 1857.

(4) No indemnity either in land or money is now allowed the States for swamp lands that may have been erroneously sold or disposed of by the United States since the act of March 3, 1857. In all such cases the purchasers from the United States or settlers under the public land laws, as the case may be, must lose the land or buy in the title from the State or its grantee. All the Government can do is to refund the purchase money without interest. When such purchasers or settlers are evicted, as they often are, they come to Congress for relief or accept a return of the purchase money they have paid, which may be refunded under section 2362 of the Revised Statutes. This bill, if it becomes a law, would give the purchase money to the State whose land was erroneously sold and at the same time confirm the title to the grantee of the United States, and thus end all trouble and litigation.

This is but simple justice to the purchaser and settler, and costs the United States nothing. If the States are willing to make this settlement the United States certainly ought not to object.

The purpose of the committee is to end this matter, and they have therefore adopted the suggestion of the Commissioner and fixed a limitation of one year as the time within which all claims shall be presented. Heretofore there has been no limitation. New claims are being presented every year. Last year a large number were presented and

allowed, and they still continue to come in. In view of the fact that no lands can be selected under this act that could not have been selected at any time since the original grant, this limitation does not appear to be unreasonably short. Here is what the Commissioner of the General Land Office said in his last report upon this point:

For more than a decade the Government has, at great expense, employed special agents to examine land selected in the manner indicated by the States and counties upon which land or cash indemnity has been claimed. Notwithstanding the great expense incurred, it does not appear that the task is nearing completion. Under the law as it is the work seems interminable. The Department is without authority to prescribe any rule barring these claims by limitation. As long as agents can be secured, with the powerful incentive of a very large contingent fee to stimulate their efforts, claims will continue to be presented, unless Congress passes a law fixing a date beyond which such claims shall not be recognized by the Government. Unless such an act is passed, the present force of examiners in the field and the clerical force in the General Land Office employed on swamp-land indemnity must be continued from year to year for an indefinite period of time.

While a statute of limitation as to the time for selecting swamp land in place might not stand the test of judicial scrutiny, I am satisfied that Congress has the power to pass a statute of limitation with reference to indemnity, whether in land or in cash.

Considering the fact that about thirty-five years have passed during which these cash and land indemnity claims might have been presented, it appears that the period of three years more would be ample time within which all legitimate claims could be filed. I therefore earnestly urge that this matter be presented to Congress, with the recommendation that an act be passed forever barring all claims for cash, lands, or other indemnity under the swamp-land laws, after three years from the passage of the act.

The recommendation of the Commissioner was approved by the Secretary of the Interior, who in his last report called attention to the necessity for the adjustment of these grants in the following language:

The Commissioner is of the opinion that within a period of three years all legitimate claims could be filed, and recommends legislation forever barring all claims for cash, land, or other indemnity under the swamp-land laws, not presented within three years from the date of the passage of such an act. As this privilege has existed since 1858 the period of limitation suggested would give ample time for the assertion of any claims not heretofore filed. There is necessity for Congressional action in the matter of the adjustment of these grants, and it is recommended that the matter be specially called to the attention of Congress.

On the 31st day of May, 1892, the Commissioner of the General Land Office, in a report to the Secretary of the Interior upon this subject, in responding to the following inquiry: "The sum of \$1,581,852.10 being the total amount of cash indemnity paid under the acts of March 2, 1855, and March 3, 1857, to date; and your knowledge of amount the pending indemnity claims will aggregate, all of which are under the said acts, together with the experience of the States in making recent claims, what in your judgment would be a fair estimate for the amount required to settle all claims that might come before you under an act extending the provisions of the act of March 2, 1855, to date, with a proviso limiting the time within which such claims might be filed, to two years from the date of the act?"—made the following answer:

It would in my judgment be impossible to submit any estimate of the amount required which would be anything more than an unreliable approximation or a mere conjecture. It may be suggested, however, as of the first importance to avoid opening the door to a multitude of ungrounded claims against the Government, that, in any measure for adjusting the claims of the States for swamp-land indemnity, the following principles should be established, viz:

(1) That under no circumstances shall more than \$2,000,000 be paid therefor, and if that sum should be found inadequate to pay all the claims allowed, that sum shall be allowed to the several States pro rata according to the amount of the claims allowed.

(2) That all claims shall be presented for consideration within one year; all not presented within same period to be barred.

(3) That all the costs of examining and passing upon claims based on lands not

found to be swamp or overflowed shall be taxed by the Department to the States presenting such claims, and deducted from any amount allowed to them as indemnity.

In view of the cash already paid as indemnity under the acts of March 2, 1855, and March 3, 1857 (viz, \$1,581,852.10), it would seem that the amount fixed by the Commissioner (\$2,000,000) would be more than enough to satisfy all the just and legal indemnity claims that may be made for swamp lands disposed of by the Government since March 3, 1857. This limitation as to amount will, as the Commissioner suggests, operate to prevent the filing of any claims other than such as are valid and just.

The third recommendation by the Commissioner, of requiring the States to pay the costs of examining all fraudulent or erroneous claims, which is embodied in the proviso to section 4 of the bill, will protect the interests of the Government still further against the filing of any but legal and just claims.

The fifth section authorizes the special agents charged with the investigation of swamp-land claims to administer oaths and provides a punishment for false swearing.

THE ARKANSAS SETTLEMENT.

The first section of the bill relates alone to the State of Arkansas.

The debt due from the State of Arkansas, as well as her claims against the United States, are of long standing and to some extent complicated and confused. In the year 1838 the State borrowed the sum of \$538,000 of the Smithsonian trust fund and issued five hundred \$1,000 bonds, redeemable October 26, 1861, and thirty-eight of such bonds redeemable January 1, 1868. These and eighty-seven \$1,000 other bonds, held for the Indian trust fund, making in all the sum of \$625,000, are now owned by the United States, having been paid by appropriations for that purpose.

The Treasurer of the United States, in addition to the said bonds owned by the United States, holds for the Secretary of the Interior, trustee of the Indian trust fund, one hundred and sixty-eight \$1,000 bonds, issued December 13, 1872, redeemable January 1, 1900. (See Appendix E.) All sums that have accrued to the State from all sources whatever since 1844, have been sequestered under section 3481, Revised Statutes, to be applied on the said bonds of the State.

The State authorities insist that the sums thus retained, with what is fairly and equitably due on the unadjusted swamp-land claim of the State, will more than pay what she owes on the bonds. (See Appendix F.) Estimating the amount for the fiscal years 1889, 1890, 1891, and 1892, there has accrued to the State from time to time, as shown by the statement of the General Land Office from the record of adjusted accounts furnished the committee and printed with this report, the sum of \$264,564.55 on account of 5 per cent of the net proceeds of the sale of public lands. (See Appendix G.)

The State is entitled to the sum of \$10,307.80 for keeping United States prisoners in the State prison under the order of President Johnson dated February 5, 1867. A copy of the order and the correspondence explaining how this sum accrued has been furnished the committee, and together with the letters is printed as Appendix H to this report. There were two installments found due but never paid to the State under the distribution act of September 5, 1841; one June 30, 1842, for the sum of \$4,482.79, and the other July 1, 1842, for \$529.37, making a total of \$5,012.16, also held and should be applied on the bonds of the State.

The State claims and is entitled to a large amount of indemnity under the acts approved March 2, 1855, and March 3, 1857. Nothing has ever been allowed or credited to her on this account. The Interior Department admits that the State has a large claim, but the amount has never been officially determined and credited on her debt.

From a statement furnished the Committee on Public Lands by the Commissioner of the General Land Office during the Fiftieth Congress, it appears that the Government of the United States has sold 200,750 acres of swamp land, the property of the State, for which it received the sum of \$196,990, and has also disposed of, for land warrants, scrip, and homestead, 162,080 acres other lands, worth, at \$1.25 per acre, the sum of \$202,600. The State insists that she should be credited with the sums so received, as of the years in which the sales were made and allowed, \$1.25 per acre for such lands as were otherwise disposed of, making a total claim on this account of \$399,590. (See Appendix I.)

The committee do not find that the items used to make up this sum have been allowed by the Department, but it does insist that when the claim is compared with the sums allowed to other States on the same account, that it appears to be a very fair and reasonable estimate.

The State made its selections properly and promptly, and yet there are still pending before the Interior Department claims for over 1,000,000 acres of land, besides the said claim for indemnity. The State also insists that as a matter of common fairness she ought to be credited with 5 per cent on lands entered under the homestead laws and located with military bounty land warrants and Scrip, estimated, at the minimum price for Government lands, \$1.25 per acre. In 1836, when the State was admitted into the Union, there was no way of disposing of public lands except by cash sale or for warrants and scrip. The homestead law was not passed until 1862 and the State, with such a contract as it made, does not think it just that the General Government should be allowed to adopt a policy that will have the effect to diminish the fund upon which she had a right to rely for the payment of the debt in question.

The greater part of all lands disposed of in Arkansas within the last thirty years have been entered under the homestead law. Up to June 30, 1887, as shown by the letter of the Commissioner, the aggregate of such lands taken as homesteads and with bounty warrants and scrip was 7,795,451.02 acres (see Appendix J). For this land the Government received as fees the sum of \$502,085 (see Appendix K). Estimating these lands at the minimum price then and now fixed by law, the State, if her claim should be allowed, would be entitled to the sum of \$487,215.65 more than has been allowed on this account—nearly twice as much as she has been allowed on sales under the present rulings. She is certainly entitled at least to 5 per cent of the fees received by the Government for lands disposed of in the State.

The committee are aware that the Supreme Court, in the 5 per cent cases in 110 U. S. Reports, 471, has decided that the States are not entitled to the percentage on the value of lands disposed of by the United States in satisfaction of military land warrants; but in view of the very able dissenting opinion of Justice Miller, concurred in by Justice Field, and of the fact that the question of jurisdiction was not passed upon by the court at that time, the State does not regard that case as finally settling the matter. The claim for such a percentage on homesteads has never been before the court, and besides, the personnel of the court has very much changed since that decision was rendered.

But whether the decision will be adhered to or not is it right and just in a matter of contract like this for the United States as one of the parties to insist upon so radical a change in the disposition of the lands, and against the right and objection of the State the other party rely upon such a strict construction made by their own courts? The Government can afford to be fair with a State in matters of contract and account like this.

Here is the contract which the Supreme Court in the said decision calls a compact:

The act of June 23, 1836, for the admission of Arkansas (5 Stats., p. 58), says that in lieu of the propositions submitted to Congress by the Territorial convention, which are rejected, the following propositions are hereby offered to the general assembly of the State of Arkansas for their free acceptance or rejection, which, if accepted, shall be obligatory upon the United States. They were formerly accepted by the general assembly. So the propositions were the result of a negotiation. It was a fair contract, entered into between parties authorized to contract. The third item of the contract is as follows:

“Third. That 5 per cent of the net proceeds of the sale of lands lying within the said State, and which shall be sold by Congress, from and after the 1st day of July next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals within the said State, under the direction of the general assembly thereof, * * * *Provided,* That the five foregoing propositions herein offered are on the condition that the general assembly or legislature of the said State, by virtue of the power conferred upon it by the convention which framed the constitution of the said State, shall provide by an ordinance, irrevocable without the consent of the United States, that the said general assembly of said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall nonresident proprietors be taxed higher than residents; and that the bounty land granted, or hereafter to be granted, for military services during the late war shall, whilst they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively.

It would appear from this that the State has the right to tax all the lands of the Government as soon as disposed of and has other rights as to the disposal, but in consideration that she would agree by an ordinance, irrevocable without the consent of the United States, not to interfere with the primary disposal, nor tax nonresidents higher than residents, nor to tax the property of the United States, nor lands granted for military services for three years after the date of the patents, either for State, county, or township purposes, there shall be paid to the State 5 per cent of the net proceeds of the sale of lands lying within the said State, and which shall be sold by Congress from and after the 1st day of July, 1836.

Land warrants were receivable for public lands at \$1.25 per acre. The homestead was granted to all settlers who are qualified, upon the payment of certain fees and five years' continuous residence and cultivation upon the lands. This was a wise and proper policy for Congress, but the same necessity for public roads exists in a country settled under the homestead law as one settled under the preëmption or graduation laws. It is now admitted that it is the best disposition to make of public lands, but the State should not be cheated out of the 5 per cent of the value which she had contracted for and had a right to expect. Many of the Western States settled prior to the passage of the homestead law, or principally under the preëmption law, have received large sums on such sales.

Exclusive of the 5 per cent on lands disposed of otherwise than by cash sales, the claim of the State may be stated as follows:

Five per cent fund	\$264, 564. 55
Cash indemnity for lands sold.....	196, 990. 00
Land indemnity, at \$1.25 per acre	202, 600. 00
Keeping United States prisoners.....	10, 377. 80
Due under distribution act.....	5, 012. 16
Five per cent on \$520,085, fees for lands entered.....	26, 004. 25
Total.....	705, 548. 76

This statement does not include anything for the 1,000,000 acres of land selected and claimed, nor for 5 per cent on the valuation of homesteads, or land located with warrants and scrip. (See Appendix L.)

APPENDIX A.

AN ACT to aid the State of Louisiana in draining the swamp lands therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, which may be or are found unfit for cultivation, shall be, and the same are hereby, granted to that State.

SEC. 2. *And be it further enacted,* That as soon as the Secretary of the Treasury shall be advised by the governor of Louisiana, that that State has made the necessary preparation to defray the expenses thereof, he shall cause a personal examination to be made under the direction of the surveyor-general thereof, by experienced and faithful deputies, of all the swamp lands therein which are subject to overflow and unfit for cultivation; and a list of the same to be made out and certified by the deputies and surveyor-general to the Secretary of the Treasury, who shall approve the same, so far as they are not claimed or held by individuals, and on that approval the fee-simple to said lands shall vest in the said State of Louisiana, subject to the disposal of the legislature thereof: *Provided, however,* That the proceeds of said lands shall be applied exclusively, as far as necessary, to the construction of the levees and drains aforesaid.

SEC. 3. *And be it further enacted,* That in making out a list of these swamp lands, subject to overflow and unfit for cultivation, all legal subdivisions, the greater part of which is of that character, shall be included in said list; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom: *Provided, however,* That the provisions of this act shall not apply to any lands fronting on rivers, creeks, bayous, water-courses, etc., which have been surveyed into lots or tracts under the acts of third March, eighteen hundred and eleven, and twenty-fourth May, eighteen hundred and twenty-four: *And provided further,* That the United States shall in no manner be liable for any expense incurred in selecting these lands and making out the list thereof, or for making any surveys that may be required to carry out the provisions of this act.

Approved March 2, 1849.

APPENDIX B.

AN ACT to enable the State of Arkansas and other States to reclaim the "swamp lands" within their limits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby granted to said State.

SEC. 2. *And be it further enacted,* That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described aforesaid, and transmit the same to the governor of the State of Arkansas, and at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided, however,* That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, so far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. *And be it further enacted,* That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

SEC. 4. *And be it further enacted,* That the provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known as designated as aforesaid, may be situated.

Approved September 28, 1850.

APPENDIX C.

AN ACT for the relief of purchasers and locators of swamp and overflowed lands.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States cause patents to be issued, as soon as practicable, to the purchaser or purchasers, locator or locators, who have made entries of the public lands, claimed as swamp lands, either with cash, or with land warrants, or with scrip, prior to the issue of patents to the State or States, as provided for by the second section of the act approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," any decision of the Secretary of the Interior or other officer of the Government of the United States to the contrary notwithstanding: *Provided*, That in all cases where any State, through its constituted authorities, may have sold or disposed of any tract or tracts of land, to any individual or individuals, prior to the entry, sale, or location of the same, under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the Secretary of the Interior: *And provided further*, That if such State shall not, within ninety days from the passage of this act, through its constituted authorities, return to the General Land Office of the United States a list of all the lands sold as aforesaid, together with the dates of such sale, and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section.

SEC. 11. *And be it further enacted*, That upon due proof, by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the State or States; and where the lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount upon any of the public lands subject to entry, at one dollar and a quarter per acre, or less, and patents shall issue therefor, upon the terms and conditions enumerated in the act aforesaid: *Provided, however*, That the said decisions of the Commissioner of the General Land Office shall be approved by the Secretary of the Interior.

Approved March 2, 1855.

APPENDIX D.

AN ACT to confirm to the several States the swamp and overflowed lands selected under the act of September 28, 1850, and act of March 2, 1849.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the selection of swamp and overflowed lands granted to the several States by the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and the act of March 2, 1849, entitled "An act to aid the State of Louisiana in draining the swamp lands therein," heretofore made and reported to the Commissioner of the General Land Office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be, and the same are hereby, confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law: *Provided, however*, That nothing in this act contained shall interfere with the provisions of the act of Congress entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March 2, 1855, which shall be, and is hereby, continued in force, and extended to all entries and locations of lands claimed as swamp lands made since its passage.

Approved March 3, 1857.

APPENDIX E.

Bonds of the State of Arkansas in custody of the Treasurer of the United States.

Date of bond.	Kind.	Rate of interest.	Title of loan.	Under act of—
		<i>Per cent.</i>		
December 13, 1872.....	Coupon.....	6	Funded debt.....	Apr. 6, 1869
Do	do	6	do	Do.
January 1, 1838	Registered.....	5	Arkansas State bond ..	Nov. 2, 1836
January 1, 1838	Coupon	6	do	Oct. 20 and Dec. 10, 1837
Do	do	6	do	Dec. 18, 1837
Do	do	6	do	Do.
Do	do	6	do	Do.

Redeemable.	Numbers.	Par value.	Amount.
January 1, 1900	2099 to 2266	\$1,000	*\$168,000
Do	2267 to 2350	1,000	†84,000
January 1, 1887.....	99, 100, 115	1,000	‡3,000
October 26, 1861.....	1 to 200	1,000	‡200,000
Do	201 to 500	1,000	‡300,000
January 1, 1868	282 to 294	1,000	‡13,000
Do	359 to 373	1,000	‡15,000
Do	401 to 410	1,000	‡10,000
Total.....			793,000

*Held for Indian trust fund.

†Held for United States. Formerly belonged to Indian trust fund.

‡Held for United States. Formerly belonged to Smithsonian Institution.

APPENDIX F.

HON. W. H. HALLIBURTON'S STATEMENT OF THE CLAIMS OF THE STATE OF ARKANSAS AGAINST THE UNITED STATES.

By virtue of the compact entered into between the United States and the State of Arkansas under act of Congress approved 23d of June, 1836, the State of Arkansas to receive "5 per cent of the net proceeds of the sale of lands lying within the said State," on condition that said State should "never interfere with the primary disposal of the soil within the same by the United States, nor with any regulation Congress may find necessary for securing title in such soil to the bona fide purchasers thereof, etc."

The total land surface of the State of Arkansas, according to the report of the Land Department of the United States, as shown on page 1190 of History of the Public Domain, is 53,045 square miles, equal to 33,948,800 acres.

Of these lands the United States has, by sales, grants, donations, etc., disposed of 16,258,813.63 acres, leaving a balance of 17,689,986.37 acres, from which balance deduct 1,013,528.52 acres for swamp lands claimed by the State as hereinafter shown, and we have 16,676,465.85 acres, on which the State claims 5 per cent of the net proceeds of sales thereof.

At the date of the compact the minimum price of all the lands in the State was \$1.25 per acre, and by an act of Congress approved March 3, 1857, as quoted and referred to on page 724 of History of the Public Domain, it was made the duty of the Commissioner of the General Land Office in stating accounts between the United States and the States entitled to this fund "to allow and pay to each State such amount as should thus be found due, estimating all lands and permanent reservations at \$1.25 per acre.

Estimating the 16,676,465.85 acres at \$1.25 per acre, we have the sum of \$20,845,582.31, less expenses of surveying and selling the same, on which to claim the 5 per cent under the compact.

By reference to page 192, History of the Public Domain, it will be seen that the average cost of "surveys and disposition from 1785 to 1880" of the public lands is 6.2 cents per acre; this gives the sum of \$1,033,940.80 as total cost of surveying and selling the 16,676,465.85 acres, which sum deducted from the sum of \$20,845,582.31, the estimated value of the lands, leaves the sum of \$19,811,641.43, on which the State claims 5 per cent.

This gives the State the sum of \$990,582.07. Of this sum the State has received \$68,177.16, leaving balance due the State on the 5 per cent fund the sum of \$922,404.91; to the foregoing must be added the sum of \$5,012.16, under the distribution act of Congress, approved the 4th of September, 1841, and the sum of \$10,377.80 due the State for keeping United States prisoners in the State prison, under Executive order dated 5th of February, 1867.

SWAMP LANDS.

By virtue of the provisions of section 1 of the act of Congress, 28th of September, 1850, commonly known as the swamp land act, Congress granted to the State of Arkansas "the whole of the swamp and overflowed lands made unfit for cultivation" then remaining unsold in the State, to be selected and reported to the Land Department of the United States under the direction and supervision of the Department of the Interior.

Under this act and instructions from the General Land Office, the constituted authorities of the State of Arkansas, prior to the 5th of October, 1854, selected and reported to the General Land Office 10,324,915.75 acres. (See report of Swamp Land Commissioners of October 5, 1854, page 9.) Of these lands the Commissioner of the General Land Office acknowledges the receipt and filing of lists containing 8,652,472.93 acres, and has approved for confirmation and patents 7,638,944.41 acres, leaving a balance of 1,013,528.52 acres acknowledged as having been received by the Department, as shown on page 697 of History of Public Domain.

The difference between the number of acres reported by the State authorities and acknowledged by the United States is 1,672,442.62 acres. And that between the number of acres reported and approved is 2,685,971.34 acres.

The cause of this difference the State has no means of knowing, but her authorities are advised that several lists of swamp lands, embracing a large number of acres, are now among the archives of the General Land Office and have been for years, but failing to have any official evidence of receipt and filing indorsed on them, are rejected.

A large number of acres embraced in the list selected and reported to the General Land Office, and suspended, has been sold by the United States for cash, land scrip, and military-land warrants, for which the State of Arkansas claims indemnity under acts of Congress 2d March, 1855, and 3d March, 1857.

Accepting the acreage suspended (1,013,528.52), or the value thereof, as all that is coming to the State under the swamp-land grant, she will be entitled to a credit of \$1,266,910.65, valuing the lands at \$1.25 per acre, that being the minimum price of the lands.

To this must be added the sum of \$8,947.72 for 7,158.18 acres of seminary, internal improvement, and public building lands, at the value of \$1.25 per acre, yet due the State under the various grants.

RECAPITULATION OF CREDITS.

Amount claimed by the State on account of the 5 per cent fund.....	\$922, 404. 91
Amount due under distribution act.....	5, 012. 16
For keeping convicts in the State's prison	10, 377. 80
Amount claimed for swamp lands	1, 266, 910. 65
	2, 104, 705. 42
Table showing the number of acres in the State of Arkansas and disposition of same:	
Total land surface, square miles.....	53, 045
Total number of acres	33, 948, 800
See Public Domain, page 1190.	
Number of acres on which the State is not allowed 5 per cent, as shown by the following, viz:	
Cash sales prior to July, 1836.....	\$1, 871, 283. 87
Military service.....	2, 258, 146. 92
Commissioner's Report, 1867, page 186.	

Swamp lands approved to June 30, 1882:

Public Domain (page 1249).....	\$7, 639, 794. 39
Internal improvements.....	500, 000. 00
Public Domain (page 255):	
Sixteenth section, Public Domain, page 228.....	886, 460. 00
Seminary (72 sections), Public Domain, page 228.....	46, 080. 00
Indian scrip.....	275, 972. 64
Commissioner's Report for 1867, page 188.	
Public buildings (Commissioner's Report for 1867, p. 189).....	10, 600. 00
Grants to individuals and companies (Commissioner's Report for 1867, p. 189).....	139, 366. 25
Private land claims (see Commissioner's Report for 1867, p. 189).....	118, 451. 12
Deaf and Dumb Asylum of Kentucky (see Commissioner's Report for 1867, p. 189).....	2, 097. 43
Railroad grants to June 30, 1882 (see Commissioner's Report for 1886, p. 292).....	2, 517, 718. 69
	16, 265, 971. 81
Less the number of acres due the State for seminary, internal improvement, and public building lands.....	7, 158. 18
	16, 258, 813. 63
Swamp lands selected and reported to the Commissioner of the General Land Office yet due the State.....	1, 013, 528. 52
See Public Domain, p. —.	
Number of acres on which 5 per cent is claimed.....	16, 676, 465. 85
Swamp lands:	
Number of acres reported by the State authorities to 5th of October, 1854 (see report of swamp land commissioners October 5, 1854, p. 9).....	10, 324, 915. 75
Number of acres approved.....	7, 638, 944. 41
Balance.....	2, 685, 971. 34
Number of acres selected and reported as acknowledged by General Land Office.....	8, 652, 472. 93
Number of acres approved (see History of Public Domain, p. 697)	7, 638, 944. 41
	1, 013, 528. 52

The following table will show the claim of the State, allowing the same rate of interest as the bonds bear, calculated from the year the sales were made:

Amount cash indemnity.....	\$195, 290. 00
Interest on same.....	389, 121. 30
Five per cent fund.....	188, 775. 02
Interest on same.....	846, 683. 64
Amount land idemnity.....	202, 600. 00
Interest on same.....	290, 464. 84
United States prisoners.....	10, 377. 80
Sixteen years' interest on same.....	9, 962. 68
Under distribution act.....	5, 012. 16
Forty-six years' interest on same.....	13, 833. 55
Seminary lands.....	8, 947. 72
Total.....	2, 161, 067. 71

APPENDIX G.

Statement of the amount accruing to the State of Arkansas on account of 5 per cent of the net proceeds of the sales of public lands in said State from July 1, 1836, to June 30, 1887, as appears from the record of adjusted accounts in the General Land Office; also the estimated amount accruing for the fiscal year 1888 not adjusted.

No. of report.	Dates covering time of adjustment.	Amount.
4464	July 1, 1836, to December 31, 1839	\$53,459.16
4902	January 1, 1840, to December 31, 1840	6,311.68
5293	January 1, 1841, to June 30, 1842	3,634.21
5711	July 1, 1842, to June 30, 1843	1,830.72
5828	July 1, 1843, to December 31, 1843	1,019.78
6086	January 1, 1844, to June 30, 1844	1,132.85
6208	July 1, 1844, to December 31, 1844	1,788.76
6474	January 1, 1845, to December 31, 1845	870.62
7152	January 1, 1846, to December 31, 1846	2,609.28
7774	January 1, 1847, to December 31, 1848	10,196.73
8475	January 1, 1849, to December 31, 1849	3,009.71
9227	January 1, 1850, to December 31, 1850	3,617.06
10099	January 1, 1851, to December 31, 1851	8,941.60
11115	January 1, 1852, to December 31, 1852	3,271.60
11528	January 1, 1853, to December 31, 1853	10,188.69
11982	January 1, 1854, to December 31, 1854	8,313.15
13468	January 1, 1855, to December 31, 1856	18,700.79
16045	January 1, 1857, to December 31, 1859	65,941.81
17727	January 1, 1860, to December 31, 1860	19,634.75
29746	January 1, 1861, to December 31, 1861	1,789.43
32485	January 1, 1862, to June 30, 1880	485.41
33063	July 1, 1880, to June 30, 1881	1,592.13
34025	July 1, 1881, to June 30, 1882	3,280.15
36010	July 1, 1882, to June 30, 1883	6,293.56
41837	July 1, 1883, to June 30, 1884	2,852.89
41837	July 1, 1884, to June 30, 1885	1,575.53
41837	July 1, 1885, to June 30, 1886	1,581.63
42543	July 1, 1886, to June 30, 1887	13,943.60
45227	July 1, 1887, to June 30, 1888	5,197.07
	Estimate of amount due for fiscal years 1889 to 1892	1,500
		264,564.55

DIVISION OF ACCOUNTS, GENERAL LAND OFFICE, June 1, 1892.

APPENDIX H.

FOR KEEPING MILITARY PRISONERS.

DEPARTMENT OF JUSTICE,
Washington, August 17, 1888.

SIR: Referring to your letter of the 1st of May last, herewith is inclosed a copy of a letter from the Second Auditor of the Treasury, dated the 10th instant, respecting the support of military prisoners since July 1, 1867.

Very respectfully,

G. A. JENKS,
Acting Attorney-General.

Hon. THOMAS C. MCRAE,
House of Representatives.

TREASURY DEPARTMENT,
SECOND AUDITOR'S OFFICE,
Washington, D. C., August 20, 1888.

SIR: Referring to your verbal inquiry as to payments made by the United States for keeping military prisoners in the Arkansas State penitentiary, I have the honor to inform you that on further examination I find that the sum of \$10,800, being the aggregate of seven accounts for keeping prisoners from July 1, 1871, to March 31,

1873, was not paid to the State of Arkansas or to the authorities of the penitentiary, but was disposed of as follows:

Paid to the Treasurer of the United States and deposited in the Treasury as a payment by the State of Arkansas on account of interest due on certain bonds guaranteed by it and held in trust by the United States for the benefit of the Chickasaw Indian Nation.....	\$10,377.80
Paid to C. Delano, Secretary of the Interior, being amount due on the funding of ninety bonds of the State of Arkansas	422.20
Total	10,800.00

I also inclose for your information a copy of the executive order designating the State penitentiary of Arkansas as a place of confinement for military prisoners.

Respectfully, yours,

J. B. CALDWELL,
Acting Auditor.

Hon. THOMAS C. McRAE,
House of Representatives.

EXECUTIVE MANSION,
Washington, D. C., February 5, 1867.

The State penitentiary of Arkansas, at Little Rock, Ark., is designated as a prison for military prisoners sentenced to the penitentiary or to be kept in confinement.

ANDREW JOHNSON.

APPENDIX I.

HOUSE OF REPRESENTATIVES, UNITED STATES,
Washington, D. C., October 12, 1888.

SIR: Please give me a memoranda showing the quantity of land disposed of by the United States in the State of Arkansas for each year since the act of September 28, 1850, that is claimed by the said State as shown by the several selection lists made under said act, giving the amount of cash sales as well as the area of the lands otherwise disposed of.

Respectfully,

THO. C. McRAE.

Hon. S. M. STOCKSLAGER,
Commissioner, etc., Washington, D. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 24, 1889.

SIR: Pursuant to your request of October 12, 1888, I transmit herewith a memorandum showing, approximately, the quantity of land disposed of by the United States since September 28, 1850, which is claimed by the State of Arkansas under the act of Congress of that date granting swamp and overflowed lands to said State. This memorandum was made after a somewhat careful examination of the records, and, while it approximates the amount disposed of, it is not intended as an accurate statement of the amount of land involved.

Very respectfully,

S. M. STOCKSLAGER,
Commissioner.

Hon. THOMAS C. McRAE,
House of Representatives.

H. Rep. 1571—2

GENERAL LAND OFFICE,
Washington, D. C., January 24, 1889.

Statement showing the number of acres of selected swamp lands in the State of Arkansas sold by the United States, the amount of cash received therefor, the number of acres located with warrants and scrip, each year since September 28, 1850, and the number of acres embraced in homesteads.

Year.	Acres of land.	Cash received.	Acres located with warrants and scrip.	Acres embraced in homesteads.
1850.....	5,240	\$6,650	5,420	.....
1851.....	41,900	50,745	36,720	.....
1852.....	9,640	12,260	26,060	.....
1853.....	6,120	7,600	7,920	.....
1854.....	12,120	9,810	2,720	.....
1855.....	18,220	12,605	1,520	.....
1856.....	28,480	21,270	9,560	.....
1857.....	36,210	34,915	8,640	.....
1858.....	9,080	8,395	1,560	.....
1859.....	13,100	13,160	2,240	.....
1860.....	16,880	15,570	3,400	.....
1861.....	2,400	2,310	800	.....
From 1868 to 1887	199,390 1,360	195,290 1,700	106,560	 55,529
Total	200,750	196,990	106,560	55,529

APPENDIX J.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 24, 1888.

SIR: In reply to your letter of this date relative to the 5 per cent fund due the State of Arkansas, in accordance with the acts of June 15, 1836, and March 3, 1857, you are informed that the State of Arkansas has been allowed by accounts adjusted in this office 5 per cent of all net receipts from the sales of public lands within her borders from the date of her admission to the Union to June 30, 1886, amounting to \$244,009.58.

The total receipts from such sales from the admission of the State to the 30th of June, 1886, have been \$5,506,980.39; while the net receipts therefrom, after the deduction from the gross receipts of expenses incident to the sales of these lands, and of repayments made for lands erroneously sold, have been \$4,880,165.44. With the exception of the comparatively small amounts of land sold under the graduation act of August 4, 1854, all these sales have been at the rate of \$1.25 per acre or more.

Lands entered under the homestead and timber-culture laws or located with scrip or military bounty-land warrants are not included in the area embraced by the term "sales of public lands," and the fees received from such entries or locations are not included in the above aggregate of receipts.

Very respectfully,

S. M. STOCKSLAGER,
Acting Commissioner.

Hon. THOMAS C. MCRAE,
House of Representatives, Washington, D. C.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 9, 1888.

SIR: I am in receipt of your letter of the 28th ultimo, asking to be informed of the area of lands in Arkansas entered under the homestead laws and located with military bounty land warrants and scrip since the admission of the State into the Union,

and in reply you are informed that the areas of public lands thus disposed of to June 30, 1887, are as follows:

	Acres.
Area of original homestead entries.....	5, 531, 344. 10
Area of military bounty land-warrant locations.....	2, 263, 226. 92
Area of scrip locations	880. 00
Total.....	7, 795, 451. 02

Very respectfully,

T. J. ANDERSON,
Assistant Commissioner.

Hon. T. C. McRAE,
House of Representatives.

APPENDIX K.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 28, 1889.

SIR: I am in receipt of your letter of the 10th ultimo, requesting to be informed of the amount received as fees upon public lands entered in the State of Arkansas, and in reply thereto you are informed that the amount of money so received to June 30, 1888, is \$502,085.

The figures above given are approximately correct.

Very respectfully,

T. J. ANDERSON,
Assistant Commissioner.

Hon. T. C. McRAE,
House of Representatives.

APPENDIX L.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 25, 1888.

SIR: In reply to your letter of the 24th instant, I have the honor to advise you that the lands selected by the State of Arkansas under the swamp grant of September 28, 1850, amount to 8,655,210.10 acres. Notice of these selections was given the local officers for the district in which the lands were situated as soon as practicable after the surveyor-general approved the selection, and the instructions given required that said lands be withheld from sale or entry; but in many cases lands were sold or entered before notice of the State's claim reached the local office, and in a number of other cases the lands selected have been found not to be swamp or overflowed within the meaning of the grant, and the claim of the State rejected and the lands opened to settlement and entry, so that the amount of land now withheld from disposition is not known and could not be ascertained without a detailed examination of the records of both this and the several local offices in the State, which would require several months.

Of the lands selected and reported to this office, 7,659,619.13 acres have been approved by the Secretary of the Interior, and 7,503,196.13 acres have been patented to the State under the grant. The difference between the amount selected and the amount patented to the State (1,152,013.97 acres) is not the actual amount of land now in dispute. It embraces many duplicate selections; all the lands for which the claim of the State has been rejected; many tracts disposed of both before and after the date of the swamp grant by sales, or locations of warrants and scrip, or under other grants to the State, and numerous tracts covered by claims adverse to the State, yet to be determined, as well as for those for which the question of title between the State and the United States only remains to be decided. Separate records of these different classes have never been made up, so that the amount of land already selected to which the State is entitled can not even be estimated.

Under date of November 2, 1850, a circular (see Lester's Land Laws, vol. 1, p. 543) setting forth the provisions of the grant of September 20, 1850, with instructions thereunder, and allowing the States to elect which of two methods they would adopt

for the purpose of designating the swamp lands, was sent to the governors of the States to which the grant applied. These methods are:

First. The field notes of Government survey to be taken as the basis for selections, and the lands shown by them to be swamp or overflowed within the meaning of the act, which were vacant and unappropriated September 28, 1850, would pass to the State.

Second. The selections to be made by State agents and reported to the United States surveyor-general for the district, with proof of the character of the lands.

By an act approved January 6, 1851, the legislature of the State of Arkansas provided for making selections according to the second method, which has since formed the basis of selections in said State.

Recently the State authorities sought to have the method of adjusting the claims of the State under the swamp-land acts changed, but so far they have not met the requirements of the Department in the matter. (See 4 L. D., 295-7 and 5 *Id.*, 636.)

The regulations governing the adjustment of cases where persons seek to file claims for or enter lands claimed as swamp which have not been approved and certified to the States are contained in the inclosed circular of December 13, 1886. After such approval and certification the State's claim can only be contested upon a showing that the approval was the result of fraud or mistake, unless the applicant alleges some right under the public land laws acquired prior to the approval.

Under the acts of Congress approved March 2, 1855 (10 Stat., 634), and March 3, 1857 (11 Stat., 251), indemnity is allowed for lands entered with cash or located with warrants or scrip between September 28, 1850, and March 3, 1857, upon proof by the State that such lands were swamp or overflowed within the meaning of the grant of 1850. If the land was entered with cash, the purchase money is paid over to the State, except in cases where more than \$1.25 per acre was received. In such cases the rule is to allow only \$1.25 per acre. Where the land was located with warrants or scrip, certificates issue authorizing the location of a like amount of public land, subject to entry at \$1.25 per acre, within the limits of the State. In case of those States in which there are no public lands subject to entry at the price aforesaid this office has for a number of years refused to issue such certificates.

There is no authority of law for allowing indemnity for swamp lands sold or located after March 3, 1857, or for lands entered under the homestead or other later laws.

The State of Arkansas has received no indemnity, either in money or land, and has submitted no proof with a view to obtaining indemnity to swamp lands.

Very respectfully,

S. M. STOCKSLAGER,
Acting Commissioner.

Hon. THOMAS C. McRAE,
House of Representatives.

PUBLIC BUILDINGS AT SELMA, ALA.

JUNE 3, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BANKHEAD, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany S. 1777.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (S. 1777) entitled "A bill for the erection of a public building at Selma, Alabama," having had the same under consideration, respectfully report as follows:

Selma, Ala., the county seat of Dallas, one of the richest agricultural counties in the State, is situated on the Alabama River, which furnishes water transportation to the Gulf of Mexico through the entire year.

The population has increased since 1880 from 7,529 to about 18,000, and it now possesses all the advantages of a modern city, including gas, electric lights, waterworks, telephone system, a well-organized and efficient fire department, free mail service, steam dummy and horse street railways, three weekly and two daily newspapers, three job printing establishments, an elegant academy of music, churches of all denominations, splendid school buildings with a thorough public and private educational system for both races, fifteen manufacturing establishments, with others being organized.

Among those already in operation are Matthews' cotton mill, 12,000 spindles; cotton-seed oil mill, one of the largest in the South; foundries and ironworks; wagon factory; sash, door, and blind factory; ice factories, rice mills, etc. There are two banks—the City National, with resources of over \$2,000,000, and the Commercial, with resources of nearly \$1,000,000.

Seven railways enter Selma, and its cotton receipts average 110,000 bales annually, worth at present unprecedented low prices \$3,500,000. It carries on a large and increasing wholesale as well as retail trade.

The enterprise of the citizens of Selma may be illustrated by mentioning the Young Men's Christian Association building, and the magnificent iron bridge over the Alabama River, both recently erected by her public-spirited citizens, the former costing nearly \$40,000 and the latter over \$59,000.

The post-office receipts for the last fiscal year amounted to \$19,244.

The value of real estate is growing with the growth of the city, which is steadily advancing, and your committee, believing that the best interest of the public service will be promoted by the passage of this bill, therefore report it back to the House and recommend its passage, and in support of the same submit the following:

POST-OFFICE DEPARTMENT,
OFFICE OF THE FIRST ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., January 25, 1892.

SIR: In reply to your letter of the 11th instant, which was acknowledged under date of the 13th instant, I have the honor to furnish the following information relative to the post-office at Selma, Ala., viz:

Gross receipts, year ended June 30—	
1881	\$17, 158
1891	\$19, 244
Net receipts, year ended June 30—	
1881	\$11, 553
1891	\$9, 708
Number of employés, year ended June 30—	
1881	4
1891	8
Present annual allowance for rent	\$1, 000

Relative to additional inquiries, you are respectfully referred to the postmaster, Mrs. Mary M. Force, at Selma, Ala.

Very respectfully,

S. A. WHITFIELD,
First Assistant Postmaster-General.

The SECRETARY OF THE TREASURY.

UNITED STATES POST-OFFICE,
Selma, Ala., February 20, 1892.

SIR: Yours of January 11 received. The postal receipts for 1881 are \$15,436.73; for 1891, \$18,272.15. This is an actual gain of 20 per cent, but it must be remembered that postage was reduced during that time. Estimating business at the old rates it would be about 34 per cent. The next ten years will probably show a greater increase, in consequence of the masses becoming educated. One of the best evidences we have of the growth of our city is the increase in our schools. Two additional public schools in less than three years; several additional teachers to their schools last opening of schools.

In 1881 there were 3 employés in post-office; in 1891 there are 6, and 4 carriers.

	Square feet.
Post-office	4, 800
Workroom	2, 496
Lobby	704
M. O. and M. department	80
Registering department	100
Postmaster's room	100
Postmaster's storage room	640

An increase of one-third would probably be sufficient for many years.

There are 270 lock boxes, 40 call boxes, and 8 drawers; 227 are rented. Four hundred would probably be sufficient.

The carrier system has but little effect upon the rental of boxes.

There is only a United States commissioner and a deputy revenue collector here. A suitable site, convenient and central, can be purchased for \$150 to \$200 front foot, 125 feet deep, if without improvements.

The population of Selma and suburbs in 1881 was 9,000; in 1891, 15,000. I express myself Selma and suburbs, because there is quite a large portion of what is really the city, but outside of corporate limits.

Selma, unlike many of our surrounding cities, has never had what is generally termed a boom; her growth has been only normal. As the same causes for prosperity that have affected the past still exist, we have a right to anticipate like results.

Selma is the central city of Alabama, on the largest river which is navigable the year round; seven lines of railroad center here; here the railroad shops are located; near enough to the coal and mineral regions (a prospective road already surveyed) for manufacturing purposes, which are already engaged in to considerable extent. Selma is the commercial center for the agricultural district; over 120,000 bales of cotton received last season. There has been more building (many very handsome residences) done in the last ten years than at any time for twenty years, which shows confidence of her moneyed men. There is now in process of construction a large and handsome hotel.

The close calculations of a bank cashier give the commercial growth of the past ten years as 37 per cent. There is every reason to anticipate as great in the next decade.

There seems to be every reason why the United States should erect a building for the convenient conducting of the postal business here, and not have forced upon her and these people just whatever can be obtained.

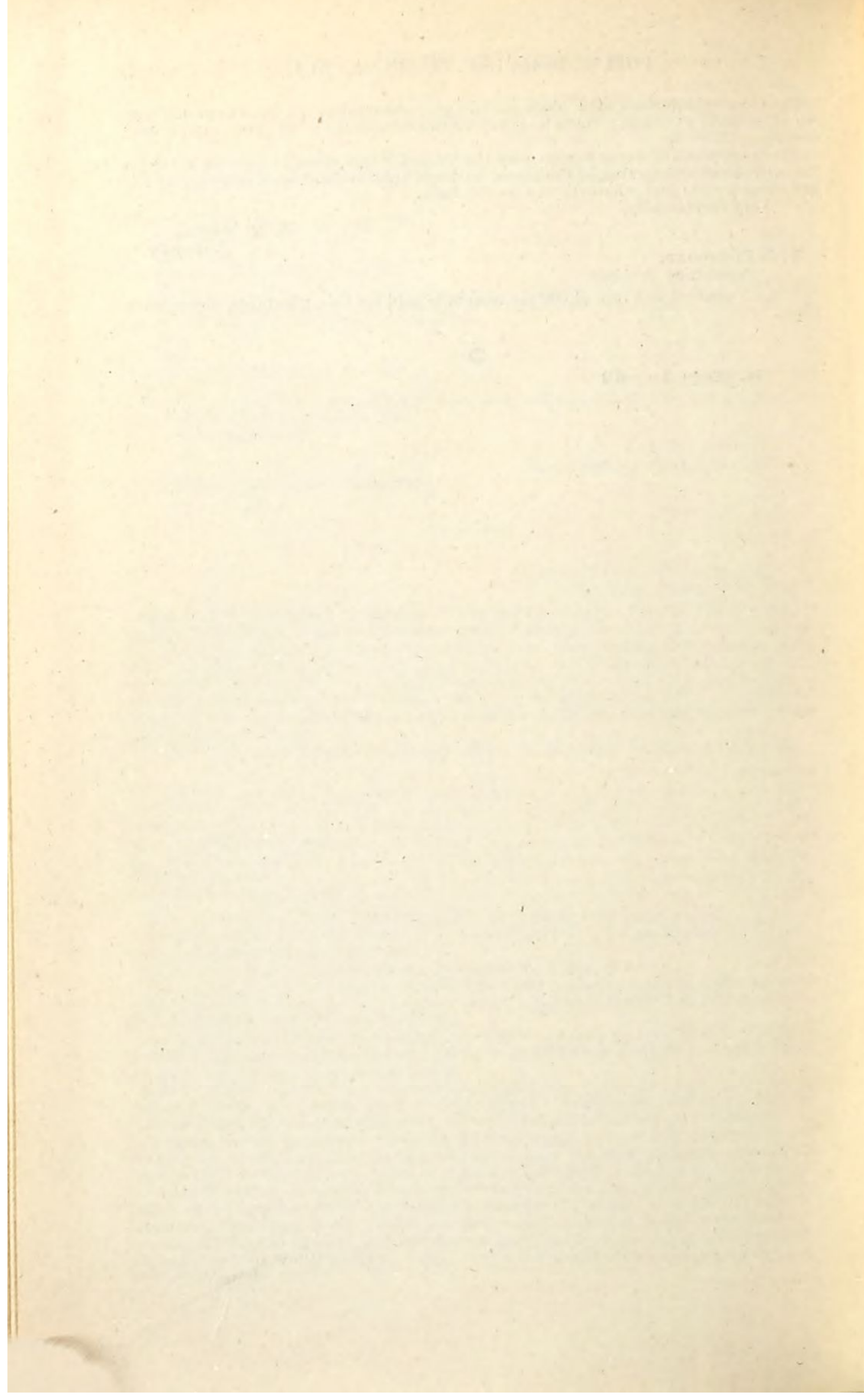
Very respectfully,

M. M. FORCE,
Postmaster.

W. J. EDBROOKE,
Supervising Architect.

P. S.—I omitted to state \$1,000 per annum is paid for this miserable, damp, dark place.





ENFORCEMENT OF IMMIGRATION AND CONTRACT-LABOR LAWS.

JUNE 3, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. STUMP, from the Select Committee on Immigration and Naturalization, submitted the following

REPORT:

[To accompany H. R. 8904.]

The committee report the accompanying bill only as preliminary to a further bill, which they expect to be able shortly to frame, the effect of which further bill they hope will be to reduce to a minimum the number of emigrants departing from foreign ports who are not entitled to admission into the United States. This is the most important end which all are seeking, namely, the prevention of the departure of illegal emigrants from the other side, so that the necessity may be avoided of turning them back across the ocean to the undesirable homes which they have left. Various plans for this purpose have been proposed, like the requirement of consular certificates procured abroad or inspections by Treasury officials located abroad at the ports of departure, on the respective merits of which plans the committee have not yet come to the decision which they intend to reach during the present session.

The aim in reporting the present bill has been to secure certain changes which every one will agree are advisable in the present methods of administering the existing laws of exclusion. No one will object to the changes who is familiar with the present methods and who wishes to see the existing laws effectually administered.

When the immigrants now land at Ellis Island for inspection, no descriptive list whatever is furnished to the immigrant inspectors by the steamship officers. The regular passenger list is taken by the customs officers for their peculiar purposes. The great streams of immigrants, wholly undocumented, appear at the desks of the various inspectors, who, as the incomers pass through the narrow gateways, write down on broad sheets their names, destinations, characteristics, and circumstances, and either let them go or detain them for special inquiries. These descriptive lists of the immigrants, now made by the United States inspectors as the immigrants come ashore, it is proposed by the present bill to require the steamship companies to prepare on the other side of the ocean and to deliver them to the immigrant inspectors on arrival, to be used by them while inspecting the immigrants and to be kept as the record of the arrivals. It will be easier for the steamship companies to make these lists as the immigrants go on board than it is for our inspectors to make them when they hasten off the ships. No just objection can be made to thus preparing them, and the advantages of the new method are obvious, as follows:

I.

The facts in the lists, concerning the immigrants, are brought home to the steamship companies as being known to them before the immigrants sail, so they can have no excuse for bringing any person shown by the lists to be disqualified for admission.

II.

The careful examinations which will be made by the agents of the steamship companies, before the immigrants go on board, will disclose many facts not now discovered until their arrival in this country; and the disclosures will prevent the sailing of many improper immigrants.

III.

The oaths of the captain and surgeon of the steamship attached to each list of immigrants, that they have before sailing personally examined their passengers, and found among them no persons who are excluded from admission into the United States, and that the facts stated in the list as to each passenger are in their belief correct and true, will be almost a complete safeguard against the bringing across the ocean of immigrants not entitled to come in.

With the many advantages to be derived from this simple change, which requires the descriptive lists or manifests of immigrant passengers to be prepared by the steamship companies before the vessel sails instead of by the immigration inspectors after the immigrants arrive, and in the absence of any just objection to the change the committee present the proposition in the confident belief that it will be adopted without hesitation or dissent, and speedily become a law. A form of the list or manifest to be required is appended to this report.

The second change proposed in the bill is intended, when there is a doubt about an immigrant's right to come in, to require that if the decision is in his favor it shall be made by more than one Treasury official. Under the present practice, if the first inspector, after hastily writing down his description of an immigrant, allows him to pass through his gate, he is fully admitted and the case is ended.

This one inspector makes the final decision to let the immigrant in, while if he detains him for special inquiry he can not be at last kept out, except upon the additional decisions of the Commissioner of Immigration at the port, the Superintendent of Immigration at Washington, and the Secretary of the Treasury, to whom, successively, he may appeal. All these officials guard the immigrant's claim to come in. Only one overcrowded and overworked inspector guards the people against the admission of an illegal immigrant. To remedy the evil portrayed, the present bill requires the inspector first examining an immigrant to detain him for special inquiry, unless it is clear beyond doubt that he has the right to come in, and directs that special inquiries shall be made by at least four inspectors; that the concurrence of at least three shall be necessary to let in the immigrant, and that the fourth inspector, if he dissents, may appeal the question to the Superintendent of Immigration and the Secretary of the Treasury.

The other provisions of the bill are of minor importance and wholly unobjectionable in every way. The committee ask an immediate consideration of the bill, in view of the great volume of spring and summer immigration.

PASSENGER LIST, LETTER A.

List or manifest of Immigrants, by the Etruria, sailing from Liverpool on the 21st day of March, 1892, and bound for New York.

No.	Full name.	Age.	Sex.	Married or single.	Calling or occupation.	Able to—		Nationality.	Last residence.	Seaport for landing in the United States.	Final destination, if any, beyond seaport of landing.	Whether having a ticket through to such final destination.	Whether paid his own passage.	Whether passage paid by other persons, corporation, society, municipality, or government.	Whether in possession of money.	Whether upwards of \$20.	If less than \$20, how much.	Whether going to join relatives, and if so, what relatives.	Whether ever before in the United States; if so, when and where.	Whether ever in prison or almshouse or supported by charity.	Whether a polygamist.	Whether under contract, express or implied, to perform labor in the United States.	Condition of health, mentally and physically, and whether deformed or crippled, and if so, from what cause.
						Read.	Write.																
1	Vincenti Sabanis	27	M.	M.	Farmer	No.	No.	Polish		New York	Plymouth, Pa.		Paid		Yes	No	\$8.00			No			Good.
2	Kalis Juskalis	25	M.	S.	do	No.	No.	do		do	do	Ticket	Paid		No			To brother		No			Do.
3	Jurgis Drangelis	30	M.	M.	do	No.	No.	do		do	Mahoney Plane, Pa.	Ticket	Paid		No					No			Do.
4	Thomas Butrim	24	M.	M.	do	No.	No.	do		do	do	Ticket	Paid		Yes	No	3.00			No			Do.
5	Peter Ikovanis	20	M.	S.	do	No.	No.	do		do	South Boston, Mass.	Ticket	Paid		Yes	No	1.00			No			Do.
6	Carl Rosendal	25	M.	S.	Clerk	Yes.	Yes.	Finn		do	New York City		Paid		Yes	No	25.00			No			Do.
7	Eilert Corneliusson	33	M.	M.	Painter	Yes.	Yes.	Norwegian		do	Chicago, Ill.	Ticket	Paid		Yes	No	20.00	1885		No			Do.
8	Edwardina Stoveland	18	F.	S.		Yes.	Yes.	do		do	do	Ticket	Paid		Yes	No	10.00	To relative		No			Do.
9	Agniska Plarvinska	33	F.	M.		No.	No.	Polish		do	Buffalo, N. Y.	Ticket		Prepaid	No			To husband		No			Do.
10	Agniska Plarvinska	5	F.			No.	No.	do		do	do	Ticket								No			Do.
11	Stanislawa Plarvinska	4	F.			No.	No.	do		do	do	Ticket								No			Do.
12	Lei Kizler	22	M.	S.		No.	No.	Austrian		do	New York City			Prepaid	No			To two brothers		No			Do.
13	Kenendel Luger	18	F.	S.		Yes.	Yes.	do		do	do			Prepaid	Yes	No	1.25	To sister		No			Do.
14	Fege Meisel	35	M.	M.		No.	No.	do		do	do			Prepaid	No			To husband		No			Do.
15	Lebe Meisel	10	M.					do		do	do									No			Do.
16	Rose Meisel	8	F.					do		do	do									No			Do.
17	Michle Meisel	5	M.					do		do	do									No			Do.
18	Necha Steigler	8	F.					do		do	do									No			Do.
19	Rifke Steigler	7	F.					do		do	do									No			Do.
SECOND LOAD.																							
20	Hugo Streckfuss	25	M.	S.	Gardener	Yes.	Yes.	German		do	New York City		Paid		Yes	No	25.00	No		No			Do.
21	George Krauss	29	M.	S.	Bricklayer	Yes.	Yes.	English		do	Pittsburg, Pa.	Ticket	Paid		Yes	No	20.00	do		No			Do.
22	Edward Fritsche	15	M.	S.		Yes.	Yes.	German		do	New York City				Yes	No	4.00	do		No			Do.
23	Fred Bradley	18	M.	S.	Laborer	Yes.	Yes.	English		do	Batavia, N. Y.		Paid		Yes	No	3.00	do		No			Do.
24	Edwin Ball	20	M.	S.	Bricklayer	Yes.	Yes.	do		do	Pittsburg, Pa.		Paid		Yes	No	15.00	do		No			Do.
25	Heaton Curtin	28	M.	S.	Tailor	Yes.	Yes.	do		do	Boston, Mass.		Paid		Yes	No	10.00	do		No			Do.
26	Andrew Kelly	48	M.	M.	Laborer	Yes.	Yes.	Irish		do	Red Bank, N. J.		Paid		Yes	No	10.00	do	Citizen	No			Do.
27	John Steward	25	M.	S.	Miner	Yes.	Yes.	Scotch		do	Cardiff, Ala.	Ticket	Paid		Yes	No	15.00	do	1888	No			Do.
28	Sidney Cully	34	M.	S.	Farmer	Yes.	Yes.	English		do	Toronto, Canada	Ticket	Paid		Yes	No	30.00	do		No			Do.
29	Richard Graves	50	M.	M.	Carpet weaver	Yes.	Yes.	do		do	Philadelphia, Pa.		Paid		Yes	No	11.00	do		No			Do.
30	James Stokes	47	M.	M.	Dyer	Yes.	Yes.	do		do	do				Yes	No	20.00	do	Citizen	No			Do.

The following is a form of the proposed list or manifest. The proposed questions have been partially answered in the form by copying from an actual list of the *Etruria's* passengers on March 21, 1892. The answers given show what information it is now the practice to record concerning immigrants. The unanswered questions show the additional information which will be required by the proposed law. There will in the actual lists be an additional right-hand column for remarks in which additions and corrections can be noted:

Certificates of master and surgeon.

I, the undersigned, master [or officer second in command] of the herein named ship, hereby make oath and say that I have made a personal examination of each and all of the passengers named herein, and have caused the surgeon of said vessel to make a physical examination of each of said passengers; that, from my personal inspection and the report of said surgeon, I believe that no one of said passengers is an idiot or insane person, or a pauper, or likely to become a public charge, or suffering from a loathsome or dangerous contagious disease, or a person who has been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, or a polygamist, or under a contract or agreement, express or implied, to perform labor in the United States, and that also, according to the best of my knowledge and belief, the information in this list or manifest, concerning each of said passengers named therein, is correct and true.

(Signed) _____.

Subscribed and sworn to this _____ day of _____.

_____,
United States Consul.

I, the undersigned surgeon, hereby make oath and say that I am a physician and surgeon of sufficient professional experience and qualifications, attained by _____ years' practice as such, that I have made a personal examination of each of the passengers named herein, and that this list or manifest, according to the best of my knowledge and belief, is full, correct, and true in all particulars relative to the mental and physical condition of said passengers.

(Signed) _____,
Surgeon.

Subscribed and sworn to this _____ day of _____.

_____,
United States Consul.

We, members of the above committee, have read and considered House bill No. 8904, and approve of the same.

We hereby authorize the chairman to report said bill to the House and recommend its passage.

FRANK P. COBURN.
M. B. WRIGHT.
HERMAN STUMP.
E. H. FUNSTON.
J. H. KETCHAM.
D. D. HARE.

BOUNDARIES OF YELLOWSTONE NATIONAL PARK.

JUNE 3, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. STOUT, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany S. 2373.]

The Committee on the Public Lands, to which was referred the bill (S. 2373) to establish the boundaries of the Yellowstone National Park, and for other purposes, submit the following report:

The act of March 1, 1872, establishing the national park defined its boundaries without reference to the particular Territory in which it was situated. It was thus located in three Territories, Idaho, Montana, and Wyoming; but the parts embraced in the two first-mentioned Territories were a strip but a few miles in width on the east side of Idaho, and a like strip on the south line of Montana, while the larger portion, and that around which centered the chief interest for park purposes, was in the Territory of Wyoming.

The Senate bill proposes to restore to the status of public land the narrow strips within the limit of Idaho and Montana, respectively. This would seem to be desirable for the purpose of avoiding a conflict of jurisdiction, should questions of exact boundaries arise, and would obviate the necessity of requisitions and other cumbersome processes of bringing criminals to justice within the limits of the Government reserve, if other than military authority should be invoked to enforce order. The western limit of the park is, by the Senate bill, coterminous with the east line of Idaho, and the north boundary line west of the point where it crosses the Yellowstone River is coterminous with the south boundary of Montana, so that the entire park is now embraced within the limits of Wyoming.

By the provisions of the Senate bill the north boundary line after it crosses the Yellowstone River follows the north branch of the same to a point where the parallel of $44^{\circ} 50'$ crosses said stream; thence east along said line to the meridian of 110° of west longitude; thence south to the parallel of $44^{\circ} 45'$ of north latitude; thence east along said line to the meridian of $109^{\circ} 45'$ of west longitude.

This change in the northerly and easterly boundary line of the park proposes to restore about 120 sections of the park lying north of the Yellowstone to the public domain, to be open to settlement and to the construction of railways.

Within the limit of this tract are located at and near Cooke City several hundred valuable mining claims, which were located more than twenty years ago. The only practicable route by rail to these mines is

*

found to be within the present park limits, although very near the north line of the same.

From the mountainous character of the country it is found impossible to construct a railway to these mines without going up the valley of the Yellowstone. To continue the exclusion for park purposes of so small a portion would seem to work a hardship to those who located upon these mining claims in ignorance of the situation, and as this territory has no features which make it desirable to reserve it for purposes of the park, it would seem proper to restore it to its former status.

The owners of the mining claims have expended large sums to entitle them to hold their claims, and unless there are reasons which have not appeared to the committee, it would seem but just to grant those interested the means of getting access to their claims, so that they may be worked with a profit.

The distance from the present terminus of the Rocky Mountain Railroad to the New World mining district, near Cooke City, is 55 miles, and no feasible route presents itself other than through this small extreme northwest part of the present park.

The easterly limits of the park are extended by the Senate bill from the one hundred and tenth degree of west longitude to the meridian of $109^{\circ} 45'$, so as to include some territory valuable as a timber reserve. From this point of $109^{\circ} 45'$ of west longitude the easterly line is projected south to the forty-fourth degree of north latitude, which adds one-fifth to the dimensions of the park north and south, and accordingly increases its area; thence westerly, on the line of 44° north latitude, the south boundary line is projected west to the Snake River; thence north to the Lewis River; thence west to west line of the park, which is the west boundary of Wyoming; thence north to place of beginning, which by the bill is the northwest corner of Wyoming.

The small area in the southwest corner, west of the Snake River, is not put within the limits of the park for the reason that it is eligible territory through which to construct railways coming from the south, and by which the park in that direction may be reached.

A majority of the committee recommend the passage of the Senate bill.

THE CAPITOL BUILDING, NEW MEXICO.

JUNE 4, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. JOSEPH, from the Committee on the Territories, submitted the following

REPORT:

[To accompany H. R. 9092.]

The Committee on the Territories, to whom was referred the bill (H. R. 9092) authorizing the Territory of New Mexico to issue bonds for the erection of a capitol building, having duly considered the same submit the following report:

On the 12th of May, 1892, the capitol building of the Territory of New Mexico, at Santa Fe, was destroyed by fire, little being left but the foundations and a part of the walls. This building had been erected by the Territory from Territorial funds. A Territorial capitol is necessary for the business of the Territory, and Territorial authorities desire to proceed in the erection of a new capitol building at as early a date as possible. In order to do this it will be necessary to issue bonds of the Territory, but the legislature would be prevented from issuing bonds for this purpose by the provisions of section 3 of the act of July 30, 1886, commonly known as the Harrison act. (See 1st Suppl. R. S., 2d ed., p. 504, and 24 Stat. L., 171.) This act provides that no law of a Territorial legislature shall authorize the contraction of a debt for the erection of buildings, excepting for "penal, charitable, or educational institutions."

This bill provides for relief from the provisions referred to, and contains authority for enabling the legislature of the Territory, if it so desires, to provide for the issuance of bonds not to exceed \$150,000, for the purpose of erecting a capitol. The provisions of the bill are carefully guarded so as to protect the interest of the Territory. No bonds are to be issued except on the authority of the legislative assembly of the Territory, and it is provided that they shall not be sold for less than par.

The committee are satisfied that the people and officers of the Territory desire to have a capitol building. If this bill is not passed at the present time to enable the legislature to contract a debt for this purpose, if it so desires, no bonds could be issued until after the meeting of the legislature and the passage of a subsequent confirmatory act by Congress. This would delay the operations of erecting the capitol for at least two years. But if this enabling act is passed at the present session of Congress, the legislature can make all necessary provision for the issuance of the bonds at its next regular session.

For these reasons the committee recommend the passage of the bill.

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REPORT

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JAMES BRIDGER.

JUNE 4, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 1198.]

The Committee on War Claims, to whom was referred the bill (S. 1198) for the relief of the heirs of James Bridger, deceased, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Claims of the present Congress, a copy of which is hereto appended as a part of this report.

Your committee concur in the conclusions stated in that report and recommend the passage of the bill.

Senate Report No. 625, Fifty-second Congress, first session.

Mr. MITCHELL, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 1198.]

Your committee, to whom was referred the bill (S. 1198) entitled "A bill for the relief of James Bridger or his legal representatives," having had the same under consideration, beg to submit the following report:

This claim was originally much larger than that stated in the bill, and is for the value of alleged improvements constructed by James Bridger at Fort Bridger, and for the rent of certain premises at that point occupied by the United States Army and subsequently appropriated by the United States for its own use.

On the 14th of September, 1888, the Senate of the United States adopted a resolution directing the Secretary of War to make a thorough investigation of this claim. In pursuance of this resolution, S. B. Holabird, Quartermaster-General, U. S. Army, was directed by the Secretary of War to make the examination. On the 16th day of January, 1889, he submitted his report to the Secretary of War, of which the following is a copy:

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., January 16, 1889.

SIR: Referring to your communication of the 18th of September last, transmitting Senate resolution of the 14th of that month, which directs the investigation of the claim of James Bridger for the value of the improvements constructed by him at Fort Bridger (and the rent of said premises by the United States Army), appropriated by the United States for its own use, etc., and a report of the amount equitably due, together with the evidence, for the consideration of the Senate, etc., I have the honor to state that in the fall of 1857 a portion of the United States Army under the command of Brig. Gen. Albert S. Johnston, on what is known as the Utah or Mormon expedition, went into camp at or near Fort Bridger, in Green River County, Utah.

This so-called fort was a trading establishment, erected some fourteen years previous, for the purpose of and in connection with trade with surrounding Indians. Some thirteen log buildings were constructed, forming a hollow square, and surrounded by a solid stone wall about 18 feet high and 5 feet thick at the base. Outside of this were outhouses, and a corral about 200 feet square, also inclosed by a stone wall. (Exhibits 12 and 13.)

In November, 1857, the United States took possession of the premises under a lease or agreement made on the 18th of that month between said Bridger for himself and Louis Vasques, of the first part, and Capt. J. H. Dickerson, assistant quartermaster, U. S. Army, of the second part.

The premises covered by the lease comprised 3,893 acres, including the fort.

For the use thereof the United States agreed to pay the sum of \$600 per annum; but such payment was not to commence until Bridger established his title to the

land. The United States was to have the privilege at any time within ten years of purchasing the premises upon the payment of the sum of \$10,000. (Exhibit 4 C.)

No rental has been paid under said lease, doubtless because Bridger never did nor could establish his title to the premises. (Exhibits 4 D, 4 F, 4 G, and 4 I.) The Interior Department never "recognized any private claim in the vicinity of Fort Bridger" (Exhibit 4 G), and a military reservation embracing this tract was declared by the President in July, 1859. (Exhibit 4 I.)

The Mormon forces retired from the advance of the United States troops; but before they retired they "burned the buildings in and around Fort Bridger," so that when the United States took possession of the premises in question there were no improvements thereon, except "a high, well-built, strong stone wall, inclosing a square of 100 feet." (Exhibit 2.)

It is true that several persons, some twenty or thirty years after the event, state that when Gen. Johnston arrived at Bridger there were at the fort a number of log-houses and other improvements of the value of from \$20,000 to \$30,000. (Exhibits 6, 7, 8, 14, 15, and 19.)

These persons are unquestionably mistaken. They have probably confounded the affairs then existing with those which existed before the destruction of the buildings by the Mormons.

This conclusion is inevitable, because Gen. Johnston, in making his report immediately upon taking possession of the premises, distinctly stated that the buildings had been burned; and besides, he could not have overlooked, if they had existed, fifteen or twenty buildings, particularly as shelter for troops, as winter was approaching, and for supplies for his army were so much needed. (Exhibit 2.)

And again, Mr. Bridger would not have consented, as he did (Exhibit 4 C), to sell to the United States for the sum of \$10,000 improvements said to be of the value of \$20,000 to \$30,000, and also the 3,898 acres of land which he claimed to own, if such improvements existed when he executed the lease hereinbefore referred to.

I must, therefore, report that the improvements at Fort Bridger at the time in question which were appropriated by the United States for its own use consisted of the solid stone wall, 18 feet high and 5 feet thick at the base, inclosing a square of 100 feet. (Exhibits 2, 12, and 13.)

The wall was laid in cement (Exhibits 8 and 9) which was brought from the States at a very great expense on account of wagon transportation of 1,200 miles. A liberal allowance for the improvements therefore should be made, and I fix the sum as both just and generous at \$6,000.

No sum is recommended for rental or for value of the land, because the claimant did not own nor have any title to it (Exhibits 4 D, 4 G, and 4 I), and because rental was promised only when his title to it was established. (Exhibit 4 C.)

All the evidence and other papers in the case are herewith respectfully transmitted.

Very respectfully, your obedient servant,

S. B. HOLABIRD,
Quartermaster-General, U. S. Army.

The SECRETARY OF WAR.

LIST OF EXHIBITS IN THE CLAIM OF JAMES BRIDGER, GREEN RIVER COUNTY, UTAH.

EXHIBIT 1.—September 14, 1888. Resolution of the United States Senate, referring claim of James Bridger for value of improvements at Fort Bridger and for rent of premises to U. S. Army to the Secretary of War to investigate the justice and equity of claim, and to report to the Senate the amount and value of improvements, the circumstances, contracts, and agreements under which premises were taken, and the amounts paid and due on account of said claim.

EXHIBIT 2.—November 30, 1857. Col. A. S. Johnston, in a letter to Maj. I. McDowell, states that before leaving Fort Supply, on Smith's Fork, the Mormons burned the buildings in and about the fort and destroyed the grain, and, so far as they could, the other crops. Fort Bridger, so called, is a strong, high, and well-built stone wall, inclosing a square of 100 feet, and has been appropriated for storage of army supplies. Two lunettes, now under construction, one on the southwest and one on the northeast corner, will make the place defensible by a small force, and a safe place for storage.

EXHIBIT 3.—December 21, 1857. Capt. John H. Dickerson, assistant quartermaster, forwards to Quartermaster-General a lease of land claimed by Bridger; states that contract is so drawn that no payment is to be made until title is established.

EXHIBIT 4 A.—August 21, 1869. Claimant, in a letter to the Secretary of War, inquires what disposition Government intends to make of Fort Bridger; states that he leased the fort and grounds to the Government in 1857 for ten years at \$600 per annum, with privilege to purchase at expiration of lease for \$10,000; asks that rents be remitted to him.

EXHIBIT 4 B.—January 6, 1870. Claimant, in letter to Secretary of War, states that he rented Fort Bridger to the Government in 1857 for a term of ten years, at the expiration of which time Government had permission to purchase fort and grounds for \$10,000; asks what disposition is to be made concerning the matter.

EXHIBIT 4 C.—November 15, 1857. Lease between James Bridger (for himself and Louis Vasques), of Missouri, of the first part, and Capt. John H. Dickerson, acting quartermaster, U. S. Army, of the second part, for ten years, of a tract of land (3,898 acres and 2 rods) in Green River County, Utah, at \$600 per annum, with privilege of purchase, at any time during the continuance of lease, for \$10,000; any buildings erected on the land by the United States to remain and descend to party of the first part at expiration of contract. Payment of rental to begin whenever title is established. Contract to terminate three months after notification by the United States of its intention to vacate and discontinue the lease.

EXHIBIT 4 D.—April 19, 1870. Quartermaster-General Meigs reports to the Secretary of War that Mr. Bridger has never established his title to the premises; that it does not appear that he has ever been paid rent therefor; that the President has ordered a military reserve at the post.

EXHIBIT 4 E.—April 23, 1870. Judge-Advocate-General advises that Mr. Bridger be notified to furnish proof of his title to the land; if title be found complete, Congress be appealed to for authority necessary to enable the Secretary of War to purchase the property or to satisfy all rents due.

EXHIBIT 4 F.—April 25, 1870. Inspector-General, U. S. Army, informs Hon. R. T. Van Horn that whenever Mr. Bridger shall produce evidence of title to the satisfaction of the Government, the Department will carry into effect, in good faith, the agreement made in 1857.

EXHIBIT 4 G.—December 14, 1872. Commissioner of Land Office reports to the Adjutant-General, U. S. Army, that the Department never recognized any private claim in the vicinity of Fort Bridger; no law exists for adjustment of such claims under the treaty of 1848 with Mexico; the Territory not being organized at time of original military reservation, there was no way by which any other title could have been obtained.

EXHIBIT 4 H.—January 12, 1878. James Bridger, in letter to the Secretary of War, inquires whether the Government desires to retain possession of the property leased by him in 1857; requests that the rent due therefor be remitted to him.

EXHIBIT 4 I.—February 8, 1878. Quartermaster-General Meigs, in report to the Adjutant-General, states that it does not appear that Bridger has established his title; that a military reservation was declared by the President July 14, 1879, of 500 square miles, which was reduced February 15, 1872, to 16 square miles.

EXHIBIT 4 K.—May 17, 1880. Hon. Samuel L. Sawyer asks the Secretary of War whether certain improvements at Fort Bridger were made by Mr. Bridger at his own expense, whether any compensation has been made to him, and any other facts bearing upon validity of claim.

EXHIBIT 4 L.—May 22, 1880. Adjutant-General, U. S. Army, reports that the records do not show by whom or at whose expense the improvements were erected; states that the fort is to be reoccupied.

EXHIBIT 4 M.—June 4, 1880. Quartermaster-General Meigs repeats the terms of the lease; states that about \$20,000 have been expended during the past sixteen years for repairs, etc.

EXHIBIT 4 N.—January 21, 1886. The Secretary of War, in letter to the Committee on Claims, United States Senate, states that no record is found of a claim of James Bridger for improvements at Fort Bridger, Utah; that it appears that when occupied by the United States in 1857 all the buildings in and about the fort had been burnt by the Mormons, and that the only improvement was a high, well-built, strong stone wall inclosing a square of about 100 feet.

EXHIBIT 5.—October 27, 1873. Claimant, in letter to Gen. B. F. Butler, states that he was with, and piloted, the army of Gen. A. S. Johnston in the so-called Utah expedition; that he offered them the use and shelter of Fort Bridger for the winter; that he entered into a written contract with Capt. Dickerson, assistant quartermaster, by the terms of which Government was to have possession of the place for ten years (recites the terms of lease as heretofore); that shortly after the expiration of the lease he applied to the Secretary of War for information as to the intentions of the Government, and was advised that as soon as he established his title the Department would comply with its contract; states that he was authorized to establish the fort and settle Salt Lake Valley by the governor of Upper California; has no paper to show for it; that had he not leased the premises to the Government he would have resided thereon, and thereby perfected his title.

EXHIBIT 6.—April 27, 1878. A. J. Archambault swears that he was at the site of the present Fort Bridger in the spring of 1843, when James Bridger located his ranch or fort there; that it contained thirteen spacious and substantial log-houses, constructed of heavy hewn timber; the roofs and floors made of sawed boards; roofs

covered with sods to make them fire-proof; the houses formed a hollow square in the center of the fort, and the whole surrounded with a strong and solid stone wall; outside of the fort were six other log-houses built in the same manner; also strong corrals for the protection and safe-keeping of horses and cattle; claimant resided on the ranch for some time and claimed the premises as his home, and it was conceded by every one that he owned them and held them in undisputed possession.

EXHIBIT 7.—January 20, 1880. William T. Mack Craw swears that he knows that James Bridger resided at Fort Bridger with his family for many years; that the improvements thereon consisted of thirteen houses altogether, strong, hewed log-houses fortified by a stone wall 18 feet high and 5 feet thick, laid in cement; also a strong corral for stock, surrounded by a stone wall, with other outhouses, pasture fields, and grounds, costing at least \$20,000. Affiant understood that said James Bridger leased these premises to the Government.

EXHIBIT 8.—January 21, 1880. John Kiney swears that he was employed as teamster in conveying stores to the army of Gen. Albert S. Johnston in Utah in 1857; remained with the army at Fort Bridger several months; that there were on the premises thirteen houses constructed of heavy, hewn logs, plank floors, and roofs covered with sods; all inclosed by a stone wall laid in cement about 18 feet high by 5 thick, having bastions at each corner and inclosing about 4,000 feet of land; also a corral for stock about 200 by 300 feet square, likewise inclosed by a stone wall laid in cement, together with six outhouses, also built of heavy, hewed logs; pastures and grounds. In affiant's judgment said improvements could not have been placed there at a cost of less than \$20,000.

EXHIBIT 9.—January 21, 1880. O. H. P. Rippeto swears that he is well acquainted with claimant; that he was with the army of Gen. A. S. Johnston in 1857 as wagon master and remained with said army at Fort Bridger for some time; on arrival at the fort found valuable improvements, which consisted of thirteen houses built of heavy, hewn logs, floored with sawed planks, and covered with sawed planks and sods, inclosed by a stone wall, 18 feet high and 5 feet thick, laid in cement, with bastions at each corner, inclosing about 4,000 feet of land; also a strong corral for stock, about 200 by 300 feet square, inclosed in like manner by a stone wall laid in cement; together with six other outhouses and pasture and grounds; the whole improvement could not be placed at a less value than \$20,000.

EXHIBIT 10.—March 30, 1880. H. T. Childs swears that he was employed at Fort Bridger in 1857; that the improvements consisted of a number of heavy log-houses, fortified by a stone wall about 18 feet high, and having bastions at each corner, said wall inclosing a space of about 4,000 square feet; there was also a corral for stock, inclosed by a stone wall about 10 feet high, beside several log-houses outside the fort. The whole improvements could not have been placed there for a sum less than \$20,000.

EXHIBIT 11.—December 5, 1883, and January 9, 1884. Bill S. 380, first session, Forty-eighth Congress, authorizing James Bridger to commence suit in the Court of Claims against the United States within one year after passage of act, for value of improvements constructed by him at Fort Bridger, and appropriated by the United States.

EXHIBITS 12 AND 13.—January 9, 1884. Committee on Claims, United States Senate, report that about 1843 claimant located upon a tract of land in Green River County, Utah, and commenced the erection of a trading house and other buildings and improvements; from that date resided at post in trade with Indians until 1857; at that time there were thirteen log houses, forming a hollow square, surrounded by a solid stone wall, 18 feet high, 5 feet thick, laid in cement, with bastions at each corner; outside a corral for stock 200 by 300 feet square, also inclosed by a stone wall about 10 feet high, 2½ or 3 feet thick, together with six other outhouses. In 1857 the army of Utah, under Gen. A. S. Johnston, took possession of the premises on behalf of the United States under a lease executed by Capt. John H. Dickerson. The United States continued to occupy the premises from date of lease (November 8, 1857) to the present time, and are now enlarging with a view to permanent occupancy. Claimant has never established his title to the premises, and the committee recommend that he be permitted to go to the Court of Claims.

EXHIBIT 14.—May 17, 1886. Joseph T. S. Wright swears that in 1857 he was with the army of Gen. A. S. Johnston, at Fort Bridger; remained there until the next June. The improvements consisted of some thirteen log houses fortified by a stone wall laid in cement, 18 feet high and 5 feet thick, inclosing an area of about 4,000 square feet, a strong corral 200 by 300 feet square, also inclosed by a stone wall, 10 feet high by 2½ feet thick, with other outhouses, all costing about \$20,000. Bridger died six or seven years ago.

EXHIBIT 15. July 12, 1887. Joseph C. Irwin swears that he was with Gen. A. S. Johnston's army in 1857 when it reached Fort Bridger; that there were a number of strong houses surrounded by a strong stone wall of great height and thickness, with bastions at each corner, a corral for stock, similarly inclosed with a stone wall,

besides several other buildings and outhouses; thinks they were then and now worth \$25,000 or \$30,000.

EXHIBIT 16.—December 12, 1887. Bill S. 480, Fiftieth Congress, first session. For relief of James Bridger, or his legal representatives.

EXHIBIT 17.—Charles M. Carter, attorney for claimant, states that some ten or twelve affidavits filed in this case before Congress were lost. They set forth that James Bridger located in Green River County, Utah, in 1843, and built Fort Bridger, which consists of thirteen log houses forming a hollow square, surrounded by a stone wall, laid in cement, 18 feet high and 5 feet thick, with bastions at each corner. Outside of the wall was a strong corral for stock, about 200 by 300 feet square, also inclosed by a stone wall about 10 feet high by $2\frac{1}{2}$ or 3 feet thick, together with six other outhouses. Bridger was prevented from establishing his title by the President declaring the tract a military reservation July 14, 1859, and by loss of his agreement with the governor of Chihuahua, Mexico, who agreed to grant him about 5,000 acres in Green River County, which included Fort Bridger, in consideration of his planting a colony at that point. The improvements cost \$20,000.

EXHIBIT 18.—C. M. Carter, attorney for claimant, in argument before Committee on Claims, United States Senate, states that in 1843 the governor of Chihuahua promised James Bridger a grant of land in Green River County, Utah (then Mexican territory), to establish a colony, and that Bridger erected Fort Bridger, at an expense of \$20,000; that he was to plant the colony and retain possession of the country for a term of years before receiving his title. The Mexican war changed his plans, as the country became part of the United States. He felt easy and continued in possession until the Mormon troubles broke out, and the U. S. Army came in 1857 and quartered in his fort. Two years later the President declared the tract a military reservation.

EXHIBIT 19.—December 7, 1888. Daniel M. Ross swears that he was well acquainted with Fort Bridger in 1857 at the time the Utah army took possession of it. That it consisted of thirteen strong, substantial houses, surrounded by a solid stone wall, 18 feet high and 5 feet thick, with bastions at each corner; a strong corral for stock about 200 by 300 feet, inclosed by a stone wall about 10 feet high and $2\frac{1}{2}$ or 3 feet thick. There were also other outhouses. Thinks the whole must have cost at least \$30,000.

EXHIBIT 20.—January 12, 1889. C. M. Carter, attorney, in reply to office letter, states that it is impossible for him to obtain more definite evidence than that on file, for the reason that James Bridger and most of his witnesses are dead.

WAR DEPARTMENT,
Washington City, February 19, 1886.

SIR: Acknowledging receipt of your request of January 25, 1886, for copies of any papers bearing on the lease of the site of Fort Bridger to the United States by James Bridger, I have the honor to forward copies of papers found on the files of the Department concerning the matter.

I beg to suggest, in view of the frequent calls upon the Department for information in this case, that the accompanying papers and my letter to you dated January 21, 1886 (copy herewith), may be printed.

Very respectfully,

WILLIAM C. ENDICOTT,
Secretary of War.

Hon. AUSTIN F. PIKE,
Chairman of Committee on Claims, Senate.

WAR DEPARTMENT,
Washington City, January 21, 1886.

SIR: I have the honor to acknowledge the receipt of the communication of the clerk of the Committee on Claims, of December 21, 1885, inclosing Senate bill No. 287, Forty-ninth Congress, first session, and requesting copies of papers relating to the claim of James Bridger for the value of improvements erected by him at Fort Bridger, Green River County, Utah, appropriated by the Government.

In reply thereto, the Adjutant-General reports as follows:

"The records of this office afford no mention of a claim of James Bridger for the value of improvements by him erected or constructed at Fort Bridger, Utah, and appropriated by the United States to its own use. On the contrary, it appears from a report of General Albert Sidney Johnston, then commanding in Utah, dated November 30, 1857, that prior to the date of occupation of that point by the United States

all the buildings in and about Fort Bridger had been burned by the Mormons, and that all the improvements that were appropriated by the troops were a high, well-built, strong stone wall, inclosing a square of 100 feet. An extract from General Johnston's report is herewith."

Very respectfully,

WILLIAM C. ENDICOTT,
Secretary of War.

Hon. AUSTIN F. PIKE,
Chairman Committee on Claims, Senate.

EXHIBIT 2.

HEADQUARTERS ARMY OF UTAH,
Camp Scott (near Fort Bridger, Black's Fork, G. R.), November 30, 1857.

MAJOR: * * * The Mormons, before they retired, burned the buildings in and about Fort Bridger, and also Fort Supply on Smith's Fork, 12 miles hence, and destroyed the grain and, as far as they could, other crops at that place. Fort Bridger, so called, is a high, well-built, strong stone wall, inclosing a square of 100 feet, and has been appropriated for the storage of the supplies for the Army.

The addition of two lunettes, now being constructed, one on the southwest corner and the other on the northeast corner of a stone inclosure adjoining the main one, but not so high, will make it defensible by a small force and a safe place of deposit for the public property that may be left when the army advances.

* * * * *

With great respect, your obedient servant,

A. S. JOHNSTON,
Colonel Second Cavalry, Commanding.

Maj. J. McDOWELL,
Assistant Adjutant-General Headquarters of the Army.

EXHIBIT 3.

CAMP SCOTT, UTAH.
December 21, 1857.

Sir: I forward herewith a lease* of a tract of land claimed by James Bridger. He bases his claim to it on some Mexican or Spanish law, somewhat similar to the pre-emption laws of the United States. I think it exceedingly doubtful whether his title is good, but the contract is so drawn that no payment is to be made until he establishes his title. I have leased the property in order to prevent heavy reclamations on the Government for loss or destruction of private property in case his title is good.

There will most probably be a permanent post established in this immediate vicinity and the tract leased would be essential to it for wood, grazing, and procuring hay.

I will in a few days make and forward to you a survey for a Government reserve, embracing the timbered and grazing lands.

I am, general, very respectfully, your obedient servant,

JNO. H. DICKERSON,
Captain, Acting Assistant Quartermaster.

Maj. Gen. THOS. S. JESUP,
Quartermaster-General, U. S. Army.

WAR DEPARTMENT,
Washington City, January 20, 1880.

SIR: At the request of C. M. Carter, attorney for James Bridger, I inclose herewith a duly certified copy of contract* with James Bridger for a tract of land upon which Fort Bridger, Utah Territory, is situated, with copy of letter from Capt. Jno. H. Dickerson, assistant quartermaster, dated Camp Scott, Utah, December 21, 1857, transmitting the said lease.

Very respectfully,

ALEX. RAMSEY,
Secretary of War.

Hon. S. L. SAWYER,
House of Representatives.

* Exhibit 4 C.

EXHIBIT 4 A.

WESTPORT, MO., *August 21, 1869.*

DEAR SIR: I would most respectfully apply to be informed what disposition the Government of the United States intends to make of Fort Bridger, which fort and grounds I have leased to the Government in the year 1857 for the term of ten years at the rate of \$600 per annum, with the privilege to purchase it at the expiration of said lease for the sum of \$10,000.

I would also respectfully apply to cause the rents accrued thereon to be remitted to me.

I have the honor to be, very respectfully, your most obedient servant,

JAMES BRIDGER.
Per A. WADSMAN.

The SECRETARY OF WAR,
Washington, D. C.

EXHIBIT 4 B.

WESTPORT, MO., *January 6, 1870.*

DEAR SIR: I have the honor to represent to you most respectfully that in the year 1857 I have leased to the Government of the United States my fort (Fort Bridger, D. T.) at the following terms:

The lease was for a term of 10 years at the rate of \$600 per annum; also that after the expiration of said 10 years the Government may, at its pleasure, purchase said fort and ground for the sum of \$10,000. But in case the Government should not desire to make such purchase, it shall give to me peaceful possession of said fort and grounds with all improvements thereon. I would therefore most respectfully apply for information what disposition the Government intends to make concerning this matter.

Hoping to be favored with an early answer, I have the honor to be, very respectfully, your obedient servant,

JAMES BRIDGER.
Per A. WACHSMAN.

Address, Westport post-office, Missouri.

The SECRETARY OF WAR,
Washington, D. C.

Respectfully referred to the honorable Second Comptroller, U. S. Treasury, Washington, D. C., with request that he will please furnish this office with a certified copy of the lease herein referred to, the same having been forwarded to his office by the Quartermaster-General March 4, 1858.

These papers to be returned.

By order Assistant Quartermaster-General.

JAMES A. EKin,
Deputy Quartermaster-General, Brevet Brigadier-General.

QUARTERMASTER-GENERAL'S OFFICE, *February 16, 1870.*

Respectfully returned to General James A. Ekin, Deputy Quartermaster-General, with a copy of lease inclosed as requested.

J. M. BRODHEAD,
Comptroller.

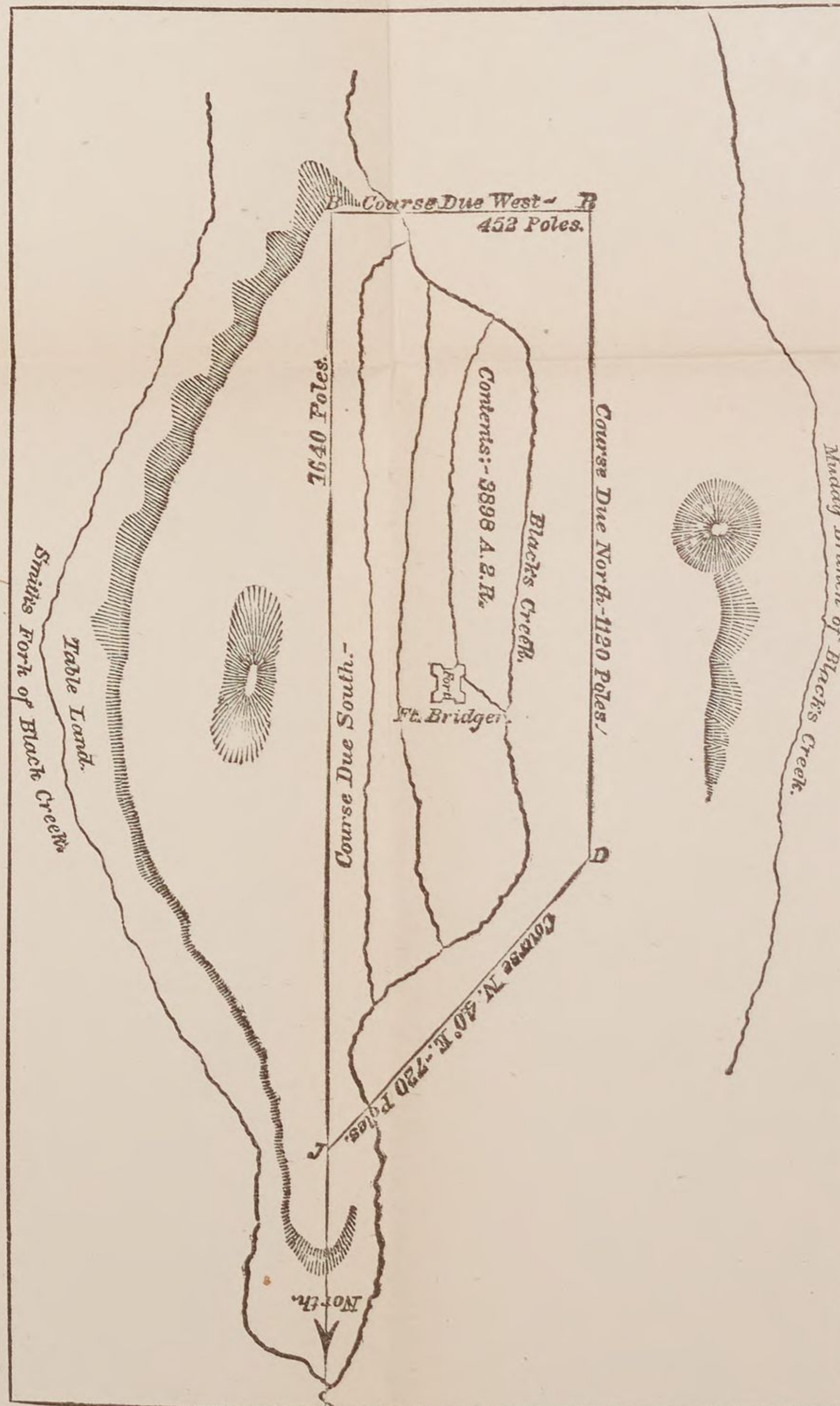
SECOND COMPTROLLER'S OFFICE, *February 19, 1870.*

EXHIBIT 4 C.

Articles of agreement made and entered into this eighteenth day of November, one thousand eight hundred and fifty-seven, between James Bridger (for himself and Lewis Vasquez), of the State of Missouri, of the first part, and Capt. Jno. H. Dickerson, assistant quartermaster, U. S. Army, on behalf of the United States, of the second part.

This agreement witnesseth that the said party of the first part, for and in consideration of promises hereinafter made by the said party of the second part, on behalf

A survey of land made for James Bridger, November 6, 1853, in the Territory of Utah and County of Green River.



JNO H. DICKINSON,
Capt. and A. Q. M., U. S. A.
his
JAMES X BRIDGER,
mark.

Beginning at the corner (marked "J" on the plat) on north side of Black's Fork 72 poles on a due south line from said stream, running thence due south 1,640 poles to a stone corner on east side of said Black's Fork (marked "B" on the plat), 160 poles from said stream on a due west line; thence due west 452 rods to a stone corner (marked "R" on the plat); thence due north 1,120 poles to a stone corner (marked "D" on the plat) on north side of Black's Fork, (marked "J" on the plat). Contents, 3,898 acres, 2 rods. Surveyed by John H. Hockaday.
Lewis Vasquez, Charles La Junesse, and James Bridger settled upon the land within site of Fort, as stated by Mr. Bridger.

GENERAL LAND OFFICE, March 9, 1854.

JOHN WILSON, Commissioner.

T. MITCHELL, Clerk.

A true copy of the original.

A true copy.

SECOND COMPTROLLER'S OFFICE, February 18, 1870.

H. Rep. 1576—52—1

of the United States, leases, for a term of ten years, a tract of land consisting of 3,898 A. Q. R.) three thousand eight hundred and ninety-eight acres and two roods, situated in Green River County, Utah Territory, and is the same tract that is described in the plat hereunto annexed and signed by the two contracting parties, which plat in lines, words, and figures is a true copy of the original. The said party of the first part grants the free use of Fort Bridger, and all the timber, wood, stone, and whatever may be found above the ground or below the ground, within the limits of said tract of land, for any purposes to which the officers of the United States Government may wish to appropriate them.

The payments hereinafter promised to be made by the said party of the second part, on behalf of the United States, to commence whenever and so soon as the said party of the first part establishes his title to the said tract of land to the satisfaction of the Quartermaster-General of the U. S. Army, or whenever the Attorney-General of the United States shall pronounce the title good.

The said party of the second part promises on behalf of the United States to pay to the said party of the first part the sum of six hundred dollars per annum for the foregoing specified uses of said tract of land.

It is understood and agreed upon by the two contracting parties that any buildings that shall have been erected by the U. S. Government on the said tract of land, and shall remain standing at the expiration of this lease, shall descend freely and fully to the said party of the first part.

It is further understood and agreed upon by the two contracting parties that the United States Government, through its agents, shall have the privilege at any time within the period of this lease of purchasing said tract of land by paying the said party of the first part the sum of ten thousand dollars.

This contract to be null and void three months after the said party of the first part shall have been duly notified by the Quartermaster-General of the U. S. Army, or by his agent, that it was the intention of the United States Government to discontinue the lease of said tract of land.

In witness whereof we have hereunto set our hands and affixed our seals this day and year first above written.

[SEAL.]

his
JAMES X BRIDGER.
mark.

JNO. H. DICKERSON,
Captain and Assistant Quartermaster, U. S. Army.

In presence of—

A. T. A. TORBERT,
Second Lieutenant Fifth Infantry, U. S. Army.
CHAS. D. SCHMIDT,
Clerk, Quartermaster's Department.

EXHIBIT 4 D.

Respectfully returned to the honorable Secretary of War, together with copy of the lease herein referred to.

Mr. Bridger has never established his title to the premises.

It does not appear from the records of this office that the tract of land was ever taken up on any officer's Form 2, or that rent has ever been paid therefor under said lease.

A military reservation at this post was ordered by the President July 14, 1859.

M. C. MEIGS,
Quartermaster-General, Brevet Major-General, U. S. Army.

QUARTERMASTER-GENERAL'S OFFICE,
April 19, 1870.

Brief of James Bridger, Westport, Mo., relating to a lease of property to the Government, etc.

Respectfully referred to the Secretary of War with the request for such information as may enable me to answer properly the within inquiries, etc.

R. T. VAN HORN.

HOUSE OF REPRESENTATIVES,
April 21, 1870.

EXHIBIT 4 E.

[Indorsement.]

WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
April 23, 1870.

Respectfully returned to the Secretary of War.

It can only be advised in this case that Mr. Bridger (who represents himself as ignorant of the intentions of the Government in regard to this property) shall be forthwith notified to furnish an exhibit of his title to the land (as required in the lease as a condition precedent to his receiving payments of rent therefor), with the understanding that, upon his title being approved as perfect by the Attorney-General, the executive department of the Government will, if authorized by Congress, proceed to complete the transaction.

It is further recommended, therefore, that such proof of title as is furnished by Bridger be submitted at once to the Attorney-General for his opinion; and further, that if the title be found complete, Congress be appealed to for the authority necessary to enable the Secretary of War to purchase the property; or, if the purchase is not proposed, for an appropriation of a sufficient amount to satisfy all rents which may be due to Bridger under the lease.

J. HOLT,
Judge-Advocate-General.

EXHIBIT 4 F.

WAR DEPARTMENT,
Washington City, April 25, 1870.

SIR: The Secretary of War directs me to return to you the accompanying letter of James Bridger, esq., of Missouri, relative to the lease of Fort Bridger, Dak., and to inform you that whenever, as required by the agreement between himself and the United States, Mr. Bridger shall produce evidence of his title to the site of that military post, and the Attorney-General of the United States shall declare the title so exhibited to be perfect, this Department will be prepared to carry into effect, in good faith, the agreement made with Mr. Bridger by the military authorities in the year 1857.

Very respectfully, etc.,

ED. SCHRIVER,
Inspector-General.

Hon. R. T. VAN HORN,
Member of Congress.

EXHIBIT 4 G.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., December 14, 1872.

SIR: I am in receipt, by reference from you the 12th instant, of a letter from Henry N. Blake, attorney, to the honorable Secretary of War, dated 30th October last, inquiring if the United States ever leased Fort Bridger, Utah, for twenty years or any other term from William C. Brown.

In reply I have to state that there is nothing on file in this office showing that any lease of Fort Bridger, or any part thereof, was ever made with Mr. Brown, his name not even appearing in a plat of survey filed in this office in 1854 by James Bridger, who claimed in accordance with said private survey executed by J. M. Hockaday.

This office has never recognized any private claim in the vicinity of Fort Bridger.

Should any claim have existed in that locality under the treaty of 1848 with Mexico there is no law for their adjustment.

No knowledge of any such claim has ever been presented to this office.

The Territory not being organized at the time of the original military reservation, there was no way by which any other title could have been obtained.

Mr. B.'s letter herewith returned.

Very respectfully, your obedient servant,

WILLIS DRUMMOND,
Commissioner.

Adjutant-General E. D. TOWNSEND, U. S. Army.

EXHIBIT 4 H.

NEW SANTA FÉ, JACKSON COUNTY, Mo.,
January 12, 1878.

SIR: I would most respectfully apply to be informed of the intention of our Government in regard to my property, Fort Bridger, Wyo., which I leased to said Government in the year 1857 for a term of years, a copy of such lease being on file in your Department. I desire to be informed whether our Government wishes to continue possession thereof; and, if so, I should be pleased to have the rent due thereon, and now in arrear, remitted to me as soon as practicable.

I have the honor to be, very respectfully, your most obedient servant,
JAMES BRIDGER.

The SECRETARY OF WAR,
Washington, D. C.

[First indorsement.]

ADJUTANT-GENERAL'S OFFICE,
Washington, January 25, 1878.

Respectfully referred to the Quartermaster-General for such information as the records of his office afford.

E. D. TOWNSEND,
Adjutant-General.

EXHIBIT 4 I.

[Second indorsement.]

QUARTERMASTER-GENERAL'S OFFICE,
Washington, February 8, 1878.

Respectfully returned to the Adjutant-General of the Army, together with such papers connected with the reserve as are on file here.

The lease referred to, made on the 18th November, 1857, between James Bridger and Capt. J. H. Dickerson, assistant quartermaster, after an extended search, has been discovered, and is herewith.

It will be observed that Captain Dickerson in his report of December 21, 1857, remarks that Mr. Bridger bases his claim upon some Mexican or Spanish law, but that it is exceedingly doubtful whether his title is good, and that the contract is so drawn that no payment is to be made until he establishes his title, and that he has leased the property in order to prevent heavy reclamations on the Government for losses or destruction of private property in case his title is good.

It does not appear that he has ever established his title, for a military reservation was duly declared by the President July 14, 1859, embracing an area of 500 square miles, which was reduced February 15, 1872, to 16 square miles.

It will be observed that the Commissioner of the General Land Office, December 14, 1872, advised the Adjutant General that—

“This office has never recognized any private claim in the vicinity of Fort Bridger.

“Should any claim have existed in that locality under the treaty of 1848 with Mexico there is no law for their adjustment.

“The Territory not having been organized at the time of the original military reservation, there was no way by which any other title could have been obtained.”

The return of such of the papers as belong to the files of this office is requested, after having served their purpose.

M. C. MEIGS,
Quartermaster-General, Brevet Major-General, U. S. Army.

[Third indorsement.]

ADJUTANT-GENERAL'S OFFICE,
Washington, February 14, 1878.

Respectfully returned to the Secretary of War, inviting attention to preceding indorsements and accompanying papers, including the lease in question, made November 18, 1857, between James Bridger and Capt. J. H. Dickerson, assistant quartermaster, found in the office of the Quartermaster-General.

E. D. TOWNSEND,
Adjutant-General.

EXHIBIT 4 K.

HOUSE OF REPRESENTATIVES,
Washington, D. C., May 17, 1880.

SIR: A claim of James Bridger, now residing in Jackson County, Mo., for \$10,000, as compensation for the use and occupation, by a portion of the U. S. Army, of Fort Bridger from 1857 to the present time, has been referred to me by the chairman of the Committee (House of Representatives) on Claims for examination and report to the full committee. I inclose an affidavit of E. H. Rippeto as a sample of many which have been filed. Referring to the original contract of lease by the Government with Mr. Bridger (a copy of which I find with the papers), dated November 18, 1857, now on file in your Department, I will be pleased to learn whether the improvements mentioned in the affidavit of Mr. Rippeto were erected by Mr. Bridger at his own expense; whether any compensation has been made to him, and any other facts in the possession of the Department which have a bearing upon the validity of his claim. Please return with answer the inclosed affidavit.

Very respectfully,

SAM'L. L. SAWYER.

Hon. ALEX. RAMSEY,
Secretary of War.

EXHIBIT 4 L.

[First indorsement.]

ADJUTANT-GENERAL'S OFFICE,
Washington, May 22, 1880.

Respectfully returned to the Secretary of War, with papers from the files of this office relating to the claim of Mr. James Bridger, and inviting attention to War Department letter to him dated February 21, 1878, from which it will be seen that at that time the Department did not recognize his claim to ownership or rent of Fort Bridger.

Nothing appears of record here to show by whom or at whose expense the improvements mentioned in the within affidavit of Mr. Rippeto were erected. The records of the Quartermaster-General's office, where the original lease is filed, may furnish additional information upon this point; also as to whether or not any compensation has ever been made to Mr. Bridger in the matter.

In this connection it is remarked that Fort Bridger, which has not been garrisoned for some time, is to be reoccupied.

R. C. DRUM,
Assistant Adjutant-General.

EXHIBIT 4 M.

[Second indorsement.]

QUARTERMASTER-GENERAL'S OFFICE,
Washington, June 4, 1880.

Respectfully returned to the honorable Secretary of War.

The lease made by Captain Dickerson, on November 18, 1857, was to run for ten years, at \$50 per month, and covered 3,898 acres of land, Mr. Bridger granting the free use of Fort Bridger and all the timber, wood, stone, and whatever might be found above or below the ground within the limits of said tract of land for any purposes for which the officers of the United States Government might wish to appropriate them; payment of rent to commence when his title was established to satisfaction of Quartermaster-General or Attorney-General.

It was further agreed that any buildings that should be erected by the United States on the said tract of land and should remain standing at the expiration of this lease should descend fully to said Bridger.

The money accounts of Captain Dickerson, on file at the Treasury, will show what expenditures, if any, were incurred for sheltering the troops at that time.

It will be observed from my indorsement of February 8, 1878, herewith, that I reported that Mr. Bridger had never established his title, but, on the contrary, that the President declared a military reservation July 14, 1859, and that the General Land Office had never recognized any private claim in the vicinity of Fort Bridger, and

further, that should any claim have existed in that locality under the treaty of 1848 with Mexico, there was no law for their adjustment, etc.

A full description of existing buildings at the post will be found printed on page 217, "Outline description of United States military posts and stations, 1872," and on page 217, Surgeon-General's circular (8) of 1875.

The records show that upon these buildings the Quartermaster's Department has expended during the last sixteen years, for repairs, etc., about \$20,000.

M. C. MEIGS,
Quartermaster-General, Brevet Major-General, U. S. Army.

EXHIBIT 4 N.

WAR DEPARTMENT,
Washington City, June 9, 1880.

SIR: In reply to your letter of the 17th ultimo, requesting information relative to the claim of James Bridger, of Jackson County, Mo., for compensation for alleged use and occupation by United States troops of Fort Bridger, Wyo., since November, 1857, I have the honor to inform you that Mr. Bridger was, February 21, 1878, informed that his failure to establish his title to the property in question, previous to its being embraced in a military reservation, precluded the Secretary of War from recognizing his claim to ownership or rent.

A copy of a report of the Quartermaster-General is herewith inclosed, which embraces all the information in relation to this claim in the possession of this Department and its bureaus.

Very respectfully, your obedient servant,

ALEX. RAMSEY,
Secretary of War.

HON. SAMUEL L. SAWYER,
Committee on Claims, House of Representatives.

The affidavit of O. H. P. Rippetto is returned herewith, as requested.

EXHIBIT 5.

NEAR NEW SANTA FE, JACKSON COUNTY, MO.,
October 27, 1873.

DEAR GENERAL: With the advice of some of my friends, and having myself every conceivable confidence in your ability and sense of justice, I would most respectfully beg leave to address you with the view of soliciting your valuable influence and assistance in the prosecution of my rightful claim against our Government regarding my property, Fort Bridger, Wyo., begging that you will have the kindness to undertake the prosecution and collection of said claim in the manner you may deem best.

You are probably aware that I am one of the earliest and oldest explorers and trappers of the Great West now alive. Many years prior to the Mexican war, the time Fort Bridger, with adjoining Territories, became the property of the United States, and for ten years thereafter (1857), I was in peaceable possession of my old trading post, Fort Bridger, occupied it as such, and resided thereat, a fact well known to the Government as well as the public in general.

Shortly before the so-called Utah expedition, and before the Government troops under General S. A. Johnston arrived near Salt Lake City, I was robbed, and threatened with death, by the Mormons, by the direction of Brigham Young, of all my merchandise, stock—in fact of everything I possessed, amounting to more than \$100,000 worth—the buildings in the fort partially destroyed by fire, and I barely escaped with my life.

I was with and piloted the army under said General Johnston out there, and since on the approach of winter no convenient shelter for the troops and stock could be found in the vicinity of Salt Lake, I tendered to them my so-called fort (Fort Bridger), with the adjoining shelter, affording rally for winter quarters. My offer being accepted, a written contract was entered into between myself and Captain Dickerson, of the quartermaster department, in behalf of the United States, approved by General S. A. Johnston, and more, so signed by various officers on the general's staff, such as Maj. Fitz-John Porter; Drs. Maddison, Mills, and Bailey; Lieutenant Rich, Colonel Weight, and others, a copy of which is now on file in the War Department at Washington. I also was furnished with a copy thereof, which was unfortunately destroyed during the war.

But the following were the terms agreed upon in said contract:

The Government was to have possession of said fort and grounds for a term of ten years, paying therefor as rent \$600 per annum; and it was also stipulated that should, at the expiration of said ten years, the Government desire to retain or purchase said fort and grounds, it was at liberty to do so by paying me the sum of \$10,000 in gold outside of the yearly rents.

Shortly after the expiration of the term of said lease I applied to the Secretary of War for information in regard to the intention of the Government in regard to my fort, whether they intended to keep or retain it, and also for the rent due me and remaining unpaid. In reply I was informed that whenever I could establish to the satisfaction of the War Department my title to said fort and grounds Department would comply with its contract.

Now, although I was authorized to establish my fort there and settle Salt Lake Valley by the governor of Upper California, I have no proper papers to show therefor. But I would respectfully call your attention to the fact that, had I not leased the premises in good faith to the Government, I would now reside thereon, and would surely by this time have perfected my title thereto under the several acts of Congress since passed, from which I was prevented by the Government keeping me out of possession thereof.

Further, I desire to state that the premises were surveyed and located by John M. Hockaday, a Government surveyor; but as it appears the latter had resigned as such, though I do not know whether his resignation was accepted before or after said survey. A copy of said survey is now on file in the surveyor-general's office in Washington.

It is my belief that I could have then easily obtained a patent for said land had I applied for the same, but owing to the fact that I was all my life out in the mountains, and consequently ignorant what steps were required to be taken to perfect my title to the premises.

I am now getting old and feeble, and am a poor man, and consequently unable to prosecute my claim as it probably should be done. For that reason I respectfully apply to you, with the desire of intrusting the matter into your hands, authorizing you, for me, to use such means as you deem proper for the successful prosecution of this claim. I would further state that I have been strictly loyal during the late rebellion, and during the most of the time in the war in the employment of the Government. Trusting confidently that you will do me the favor of taking the matter in hand or furnish me with your advice in regard to the matter,

I have the honor, general, to be your most obedient servant,

JAMES BRIDGER.

General B. F. BUTLER,
United States Senator.

EXHIBIT 6.

STATE OF MISSOURI, *City of Saint Louis, ss:*

Be it remembered that on this 27th day of April, A. D. 1878, personally appeared before the undersigned, a notary public within and for the city and State aforesaid, who was qualified as such on the 28th day of November, A. D. 1874, and whose commission expires on the 4th day of November, in the year 1878, August Archambault, who is known to me to be the person he represents himself to be, and upon being duly sworn by me says, that he is personally well acquainted with James Bridger, the Western pioneer and trader, and has known him a long time as an honest and upright man; that affiant has been employed by the company of which James Bridger was a partner as a hunter and trapper. Affiant was, in the spring of the year 1843, with said James Bridger at the site of the present Fort Bridger, on Blacks Fork, in Green River Valley, now in Wyoming Territory, when he, the said James Bridger, located his ranch or fort there, and remained there during the whole time it took to build it. Said ranch or fort contained thirteen spacious and substantial log-houses, constructed out of heavy-hewed timber, which had to be hauled from some distance; the roof and floors were made out of sawed boards, which were sawed out with whip-saws; the roofs were also covered with sod to render them fireproof, and the houses were so located as to form a hollow square in the center of said fort, and the whole was surrounded by a stone wall strong and solid; outside of such fort were six other log houses, built in the same manner and of the same material, and were used as stables and other purposes; besides these there were strong corrals or inclosures for the protection and safe-keeping of horses and cattle. All these improvements were, owing to existing circumstances, very costly and expensive.

Affiant further says that Mr. James Bridger resided at said ranch or fort for a

number of years, and done a general trading business with Indians, trappers, and emigrants to Oregon and California; that he claimed the premises as his home and only home, and to affiant's best knowledge and belief had no other home at that time; that the said James Bridger lived there with his family, and it was generally conceded by everybody that he owned said premises, and held them in undisputed possession.

Affiant further says that he is not related to James Bridger, and has no interest in any of his claims whatsoever.

A. J. ARCHAMBAULT.

Sworn and subscribed to before me the year and day first above written. Witness my hand and notarial seal at office.

[SEAL.]

JULIUS CONRAD,
Notary Public.

And I do furthermore certify that I am not related to James Bridger, and have no interest in this claim whatsoever.

JULIUS CONRAD,
Notary Public.

EXHIBIT 7.

STATE OF MISSOURI, *County of Jackson, ss:*

I, William T. Mack Craw, of the county of Jackson, in the State of Missouri, upon oath state that I am well acquainted with James Bridger, lately of Fort Bridger, Wyoming Territory, and now of Jackson County, Missouri; that I know that the said James Bridger resided at said Fort Bridger, with his family as his home for many years; that his said improvements thereon consisted as nearly as I can remember, of thirteen houses, altogether; strong hewed log houses, fortified by a stone wall; laid in cement, 18 feet high and 5 feet thick, encompassing an area of about 4,000 square feet, also a strong corral 200 by 300 feet square, used for stock, inclosed by a stone wall 10 feet high and 2½ or 3 feet thick, with other outhouses, pasture, field, and grounds, costing an outlay of at least \$20,000, considering the price of labor and the remote distance from the civilized world at the time.

I also understand that the said James Bridger had leased said fort and premises in the fall of the year 1857 to our Government, for a term of ten years, at the annual rent of \$600 in gold, and that it was also agreed in said written contract that at the expiration of said term of ten years the Government could, at its option, purchase said fort and premises for the sum of \$10,000, or return the same to its owner, with all improvements thereupon. And I further state that I am not in the least interested in this or any other claim of said James Bridger.

his
WILLIAM T. X MACK CRAW.
mark.

Signed in the presence of—

A. WACHSMAN.

W. W. GRIFFITH.

STATE OF MISSOURI, *County of Jackson:*

Personally appeared before the undersigned, a notary public for and within the State and county aforesaid, who was qualified as such February 24, 1879, and whose commission expires February 24, 1883, William T. Mack Craw, who, being duly sworn, says the foregoing statements are true and correct to the best of his knowledge and belief.

Sworn and subscribed to before me this 20th day of January, 1880.

A. WACHSMAN,
Notary Public.

EXHIBIT 8.

STATE OF MISSOURI, *County of Jackson, ss:*

I, John Kinney, of the county of Jackson, in the State of Missouri, upon oath state that I am well acquainted with James Bridger, formerly of Fort Bridger, in Wyoming Territory, but now residing in this county and State; that I was employed as a teamster in conveying stores to the army of Utah, under the command of General Albert S. Johnston, in the year 1857; that I remained with said army for a number of months at Fort Bridger.

That it was generally known and understood by all connected with said army, and I do believe, that the said James Bridger did rent or lease his property or premises called Fort Bridger to our Government for a term of years and for a stipulated sum, to be paid to him annually.

That there were valuable improvements upon said premises upon our arrival there, made by the said James Bridger, which to the best of my recollection consisted in thirteen houses, constructed out of heavy hewed logs, plank floors, and plank roofs, covered with earth and sod, which were inclosed by a stone wall, laid in cement, about 18 feet high by 5 feet thick, having bastions at each corner, and inclosing about 4,000 square feet of ground.

Also a corral for stock, about 200 by 300 feet square, likewise inclosed by a stone wall, laid in cement, about 10 feet high and $2\frac{1}{2}$ or 3 feet thick, together with six out-houses, also built of heavy hewed logs; pastures and grounds.

In my judgment the above-named improvements on said premises could not at that time be placed there at a cost of less than \$20,000.

I am also convinced that our Government derived great benefit by leasing said premises, since it afforded shelter for the Government stores, to the troops and property, which otherwise would have been destroyed, and caused great suffering, if not destruction, to said army.

And that to the best of my knowledge the said James Bridger has not received any payment on account of said lease or rent of said premises, and that the Government has continued to occupy said premises up to the present date.

And I do furthermore state that I am not interested whatsoever in the claim of said James Bridger.

JOHN KINEY.

STATE OF MISSOURI, *County of Jackson, ss:*

Personally appeared before the undersigned, a notary public within and for the State and county aforesaid, who was qualified as such February 24, 1879, and whose commission expires February 24, 1883, John Kinney, who is personally known to me, and who, being duly sworn, upon his oath says that the foregoing statement is correct and true, to the best of his knowledge and belief.

Sworn and subscribed to before me this 21st day of January, 1880.

[SEAL.]

A. WACHSMAN,
Notary Public.

EXHIBIT 9.

STATE OF MISSOURI, *County of Jackson, ss:*

I, O. H. P. Rippeto, of the county of Jackson, in the State of Missouri, upon oath state that I am well acquainted with James Bridger, formerly of Fort Bridger, now in Wyoming Territory, but who now resides in the county of Jackson, in the State of Missouri; that I accompanied the so-called army of Utah, commanded by Albert S. Johnston, in the year 1857, as a wagon-master in the employ of John M. Wells, conveying Government stores for said army, and remained with said army at Fort Bridger for some time; that I always understood and believed that the said James Bridger had leased or rented his property called Fort Bridger to our Government for a term of years, and for a stipulated sum of money, to be paid to him annually; that on our arrival at Fort Bridger we found quite valuable improvements on said premises, which consisted, as nearly as I can remember, in thirteen houses, built of heavy hewed logs, floored with sawed planks, and covered with sawed planks and sod, which were inclosed by a stone wall laid in cement about 18 feet high and 5 feet thick, with bastions at each corner inclosing about 4,000 square feet of ground. Also a strong corral for stock, about 200 by 300 feet square, inclosed in a like manner by a stone wall laid in cement and about 10 feet high and $2\frac{1}{2}$ or 3 feet thick, together with six other out-houses, pastures, and grounds.

In my estimation the whole improvements on said premises, considering the price of labor and the remote distance from the States, could not be placed there at a cost of less than \$20,000.

I also state that I do believe that the Government was greatly benefited by leasing or renting said premises from James Bridger, by rendering shelter against the inclemency of the weather in that severe winter for the Government stores, the troops, and animals of said army, which otherwise would have certainly suffered severely.

And that to the best of my knowledge said James Bridger has not received any payment or recompensation on account of said lease or rent, and that the Government has continued to occupy said premises to the present day.

And I do furthermore state that I have no interest whatsoever in this or any other claim of the said James Bridger.

O. H. P. RIPPETO.

STATE OF MISSOURI, *County of Jackson, ss:*

Personally appeared before the undersigned, a notary public for and within the State and county aforesaid, who was qualified as such February the 24th, 1879, and whose commission expires February 24, 1883, O. H. P. Rippeto, who is personally known to me, and who, being duly sworn, upon his oath says that the foregoing statement is correct and true to the best of his knowledge and belief.

Sworn and subscribed to before me this 21st day of January, 1880.

[SEAL.]

A. WACHSMAN,
Notary Public.

EXHIBIT 10.

INDIAN TERRITORY, *Choctaw Nation, ss:*

I, Henry T. Chiles, of the Chickasaw Nation in Indian Territory, upon oath state: That I am well acquainted with James Bridger, formerly of Fort Bridger, in Wyoming Territory, but now residing in Jackson County, Mo.; that I was at Fort Bridger in about the year 1857, carrying stores to said fort; that I always understood, and do believe, that the said James Bridger did rent or lease for a term of years his premises, called Fort Bridger, to the Government of the United States; that there were valuable improvements at said Fort Bridger, consisting, as nearly as I can remember, of a number of heavy log houses, fortified by a stone wall about 18 feet high and having bastions on each corner, said wall encompassing a space of about 4,000 square feet. There was also a corral for stock inclosed by a stone wall about 10 feet high, and about 300 by 200 feet long, besides several log houses outside the fort itself.

The whole improvements, owing to the remoteness from civilization and high price of labor out there at that time, could not have been placed there for a sum of less than \$20,000.

That to the best of my knowledge he (Mr. Bridger) has not received payment for any part thereof, and that the Government has continued to occupy his premises to the present time. I do also state that I am not in anywise concerned or benefited by this or any other claim of the said James Bridger.

H. T. CHILES.

INDIAN TERRITORY, *Choctaw Nation, ss:*

Henry T. Chiles personally appeared before the undersigned, a United States commissioner for and within the county and Territory aforesaid, who is personally known to me, and who, being duly sworn, upon his oath says that the foregoing statement is correct and true to the best of his knowledge and belief.

Sworn and subscribed to before me this 30th day of March, A. D. 1880.

[SEAL.]

ISAREL W. STONE,
United States Commissioner.

[S. 380, Forty-eighth Congress, first session. Report No. 21.]

EXHIBIT 11.

A BILL for the relief of James Bridger.

Be it enacted by the Senate and House Representatives of the United States of America in Congress assembled, That James Bridger be, and he is hereby, authorized to commence his suit in the Court of Claims against the United States, at any time within one year after the passage of this act, for the value of the improvements by him erected and constructed at Fort Bridger, situated in Green River County, in the Territory of Utah, and appropriated by the United States to its own use; and the Court of Claims shall have jurisdiction to hear and determine the said claim free from the bar of the statute of limitations; and said claimant and the United States shall have the right to use as evidence before said court any papers or documents in the War Department in relation to said claim, and any other competent testimony relative to the claim; and said court shall render judgment in favor of said claimant for the value of said improvements as found by said court.

EXHIBIT 12.*

[Senate Report No. 21, Forty-eighth Congress, first session.]

A bill identical with this was favorably reported from the Committee on Claims of the House of Representatives June 12, 1880. A similar bill was favorably reported from this committee July 6, 1882.

The evidence in this case clearly establishes the following facts: About the year 1843 claimant located upon a tract of land situated in Green River County, now Utah Territory, and commenced the erection of a trading house and other buildings and improvements. From the date of said location said claimant resided at said post, and engaged in trade with the surrounding tribes of Indians, until in the fall of 1857, at which last mentioned date the improvements constructed by said claimant at said trading post consisted of thirteen spacious and substantial log-houses constructed out of hewed timbers; the roofs and floors were of sawed boards, which were sawed out with whipsaws; the roofs were also covered with sod to render them fire-proof. The houses were so located as to form a hollow square in the center of an area of about 4,000 square feet, all of which was surrounded with a strong, solid stone wall, laid in cement, about 18 feet high and 5 feet thick, with bastions at each corner. Outside of said wall was a strong corral for stock, about 200 by 300 feet square, inclosed in like manner by a stone wall laid in cement, about 10 feet high and 2½ or 3 feet thick, together with six other outhouses. The testimony shows that these improvements were erected by said claimant, and were used by him as his residence and as a trading post, and were called and known as Fort Bridger. In the year 1857 the Army of Utah, commanded by General Albert S. Johnston, took possession of said premises on behalf of the United States, under a written contract of lease executed by claimant, of the one part, and Capt. John H. Dickerson, assistant quartermaster, United States Army, on behalf of the United States, of the other part.

The material portions of said written contract, so far as the claim of said Bridger is concerned, are as follows:

Said claimant leased to the United States for the term of ten years from the 18th day of November, 1857, a tract of land consisting of 3,898 acres and 2 roods, situated in Green River County, Utah Territory, and particularly described in a plot attached to said written contract and made a part thereof, upon which tract of land is situated Fort Bridger. By the terms of said contract the United States agreed to pay to claimant an annual rent for the use of said premises of \$600, the rent to commence as soon as claimant established his title to said tract of land to the satisfaction of the Quartermaster-General of the United States, or whenever the Attorney-General of the United States should pronounce the title good. It was further agreed by the contracting parties that the United States Government, through its agent, should have the privilege at any time within the period of said lease of purchasing said tract of land by paying claimant the sum of \$10,000. It is also provided by the terms of said contract that said lease might be terminated by the United States upon three months' notice by the Quartermaster-General of the United States Army, or by his agent, to claimant.

The United States have continued to occupy said premises from the day of the date of said lease to the present time, and are now enlarging it with a view to its permanent occupancy. The claimant has never established his title to the premises, but on July 14, 1859, less than two years after the date of said contract, the President declared it a military reservation, and that the General Land Office had never recognized any private claim in the vicinity of Fort Bridger; and, further, should any claims have existed in that locality, under the treaty of 1848 with Mexico, that no law existed for their adjustment. The testimony further shows that the cost of said improvements to said claimants was about the sum of \$20,000.

Claimant believing himself entitled to be paid for the use and occupation of Fort Bridger and the buildings connected therewith, and for the value of said improvements, made application to the War Department therefor, and was informed by a communication from the Secretary of War, dated February 21, 1878, that his failure to establish his title to the property in question previous to its being declared a military reservation precluded the Secretary of War from recognizing his claim to ownership or rent.

It may be, and really appears to be, a hardship upon claimant that he should be entirely deprived of the improvements erected by him, and of compensation for their use by the United States for a period of more than twenty years; yet the terms of said written contract clearly preclude him from a recovery according to the forms of law. The evidence upon which this report is founded consists of numerous affidavits and communications from the War Department, together with a certified copy of the written contract.

* Exhibit 13 is a similar bill.

Your committee believe that the ends of justice will be promoted by permitting the claimant to assert his claim in a court of justice, where witnesses can be subjected to cross-examination and the proper tests applied for the ascertainment of a just and equitable determination.

Your committee therefore recommend that the accompanying bill, as amended, be passed, permitting claimant to sue in the Court of Claims for the amount he believes himself entitled to, free from the bar of the statutes of limitations, and that his case be heard by said court and judgment be given by the court in favor of claimant for the value of said improvements as found by the court.

EXHIBIT 14.

STATE OF MISSOURI, *County of Jackson*:

Personally appeared before me, George T. Purcell, a justice of the peace in and for the county and State aforesaid, Joseph T. S. Wright, a person well known to me to be respectable and entitled to full credit and belief, and after being duly sworn testifies as follows: My name is Joseph T. S. Wright; my age is fifty-three years; my post-office address is Oak Grove, Jackson County, Mo. In the year 1857 I was a soldier with Col. A. S. Johnston. We started for Utah in the month of August, 1857. I belonged to a battalion, four companies, commanded by Col. Barnett E. Bee. We started from Fort Leavenworth. We were overtaken by Colonel Johnston about 100 miles east of the South Pass; we then all marched together; we arrived at Fort Bridger in November of the same year. The winter was so severe that when we got to Fort Bridger that Colonel Johnston concluded to remain there during the winter; we remained there until the next June, 1858. While we were there I understood from the officers of the command, as well as Captain Bridger, that the officers, Colonel Johnston and others, had leased the fort for ten years at \$600 per annum, and that the officers agreed to pay Captain Bridger \$10,000 for the fort and his improvements, if he could make a good title for the same. The improvements consisted, as nearly as I recollect, of some thirteen log houses, strong, and hewed of heavy logs, fortified by a stone wall laid in cement, 18 feet high and 5 feet thick, inclosing an area of about 4,000 square feet; also a strong corral 200 by 300 feet square, used for stock, inclosed by a stone wall, also laid in cement, 10 feet high and 2½ feet thick, with other outhouses, all costing at least an outlay of \$20,000, considering the price of labor and the remote distance from the civilized world at the time it was built. I was well acquainted with Capt. James Bridger; he died in this county about six or seven years ago. I further state that I have no interest in the prosecution of this claim.

JOS. T. S. WRIGHT.

Subscribed and sworn to before me this the 17th day of May, 1886.

GEO. T. PURCELL,

Justice of the Peace, Blue Top, Jackson County, Mo.

STATE OF MISSOURI, *County of Jackson*, ss:

I, M. S. Burr, clerk of the county court of the county and State aforesaid, the same being a court of record, and having a seal, do hereby certify that George T. Purcell, esq., before whom the annexed instrument was proven or acknowledged, was at the date thereof a justice of the peace in and for said county, duly commissioned, qualified, and authorized to take acknowledgments and administer oaths, and I verily believe the signature thereto to be genuine. I further certify that the said instrument is duly executed according to the laws of the State of Missouri.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Independence the 17th day of May, 1886.

[SEAL.]

M. S. BURR,
Clerk.

EXHIBIT 15.

STATE OF MISSOURI, *County of Jackson*:

Personally appeared before L. F. McCoy, clerk of the circuit court, Joseph C. Irwin, well known to me to be respectable and entitled to full credit and belief, and after being duly sworn, testifies as follows:

My name is Joseph C. Irwin; my age is seventy years; I reside at Kansas City, Mo.; my post-office is Kansas City., Jackson County, Mo.; I have resided in this

county for sixty years. I was a freighter across the plains for many years; I was the senior partner of the firm of Irwin, Jackman & Co., for transporting Government supplies to Utah and Mexico and other points west during the late war and a private freighter for many years prior to that time. I was well acquainted with James Bridger, the founder and builder of Fort Bridger, on the road to Salt Lake, in the Territory of Wyoming, and was with Col. A. S. Johnston's command in 1857, when his army reached the fort above mentioned and where he went into winter quarters; Mr. Bridger was with the command, employed as a guide. After Col. Johnston went into winter quarters he leased the fort and all the buildings, consisting of a number of strong houses built of hewn timbers, substantially built, which was inclosed and fortified by a strong stone wall of great height and thickness, with bastion at each corner, and was so built to protect the owner from the attacks of the Indians. There was also a corral for stock, similarly inclosed with a stone wall; besides there were several buildings and outhouses of same construction as those inside the fort, which were occupied in former years by trappers and traders and other families, with splendid grazing grounds, with finest water and timber, and, considering the time and the great distance from any settlement when they were built, they must have cost many thousand dollars. I am well acquainted with the values of ranch property, and know that such property would then and now be worth \$25,000 or \$30,000. But I have no knowledge of what Colonel Johnston was to pay for the use of said property, or how long he rented it for. I have no interest, direct or indirect, in the prosecution of this claim.

JOSEPH C. IRWIN.

Subscribed and sworn to before me this 12th day of July, A. D. 1887.

L. F. MCCOY,
Clerk of the Circuit Court of Jackson County, Mo.

HIBIT 16.

[S. 480, Fiftieth Congress, first session.]

A BILL for the relief of James Bridger or his legal representatives.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That James Bridger, or his legal representatives, be, and he is hereby, authorized to commence a suit in the Court of Claims against the United States for the value of the improvements by him erected and constructed at Fort Bridger (and the rent of said premises by the United States Army), situated in Green River County, in the Territory of Utah, and appropriated by the United States to its own use; and the Court of Claims shall have jurisdiction to hear and determine the said claim free from the statute of limitations, and to adjudicate the same upon the basis of justice and equity, and render judgment thereon; and said claimant and the United States shall have the right to use as evidence before said court any papers or documents in the War Department in relation to said claim, and any other competent testimony relative to the claim; and said court shall render judgment in favor of said claimant for the value of said improvements as found by said court, and from any judgment that may be rendered in said cause either party thereto may appeal to the Supreme Court of the United States: *Provided*, That such appeal shall be taken within sixty days from the rendition of said judgment.

EXHIBIT 17.

The claim of James Bridger (S. 480, Fiftieth Congress) has been pending in Congress many years, and there were some ten or twelve affidavits on file in the case, which were referred by the Committee on Claims in the House, Forty-eighth Congress, to Hon. Thomas F. Ochiltree for examination and report, when he lost all of said affidavits with other papers, and the same can not now be found anywhere. That said affidavits set forth in substance as in said Senate Report No. 21, Forty-eighth Congress, first session, the following facts to wit: That James Bridger located in Green River country, Utah Territory, in 1843 (where Fort Bridger now stands), and commenced and finished Fort Bridger, "which consisted of thirteen spacious and substantial log houses constructed out of hewed timber." "The houses were so located as to form a hollow square in the center of an area 4,000 square feet, all surrounded with a solid

stone wall, laid in cement 18 feet high and 5 feet thick, with bastions at each corner. Outside of said wall was a strong corral for stock, about 200 by 300 feet square, inclosed in like manner by a stone wall laid in cement, about 10 feet high and 2½ or 3 feet thick, together with six other outhouses." These last affidavits showed that "these improvements were called and known as Fort Bridger. In the year 1857 the army of Utah, commanded by General Albert S. Johnston, took possession of said premises on behalf of the United States under a written contract of lease executed by claimant of the one part and Capt. John H. Dickerson, assistant quartermaster, U. S. Army, on behalf of the United States, of the other part."

This lease was for ten years from 18th of November, 1857, to include a tract of land, 3,898 acres, upon which Fort Bridger was situated.

In this instrument the Government was to pay claimant an annual rental of \$600. It was agreed also that during the period of said lease the United States had the privilege of purchasing said land for \$10,000, as soon as title was established or acquired by claimant, which latter was prevented by the President declaring it a military reservation, July 14, 1859. That he was further prevented from completing his title because of the loss of his agreement with the governor of Chihuahua, Mexico, who agreed to grant to him near 5,000 acres of land in Green River country (including the land where Fort Bridger now stands), in consideration of his planting his colony at said point. The establishment of a military reservation over said lands defeated any rights he might have under the treaty of 1848 with Mexico.

The evidence further shows that these improvements cost claimant about \$20,000, and from the statement of the Commissioner of the General Land Office could not acquire title because there was no way to do so at that date; the Territorial organization was not then effected and no facilities existed for the survey of this land, and hence no possible way for claimant to perfect his title for the various reasons above enumerated.

CHAS. M. CARTER,
Attorney for claimant, room 65, Corcoran Building, City.

EXHIBIT 18.

IN THE MATTER OF THE CLAIM OF JAMES BRIDGER.

Honorable COMMITTEE ON CLAIMS,
United States Senate:

Under the auspices of the governor of Chihuahua, in 1843, before the Mexican war, Capt. James Bridger was induced under a promise by the Government of a large grant of land to establish a colony in Green River country, Utah, then Mexican territory, which he did at great expense, and erected Fort Bridger for protection against Indians, at a cost of over \$20,000.

Under the Spanish rule he was to plant said colony and retain possession of the country for a term of years before he was to receive the title to that grant.

The Mexican war entirely changed his plans, as under the treaty of 2d February, 1848, his possessions became a part of the United States territory. He then felt easy, as he was protected in all his possessory rights by treaty, and as it was generally understood that the protective policy of the United States (which protected the persons and property of the Spanish and French subjects in the acquisition of Florida and Louisiana) would be also extended over all who came under our flag from Mexico. In this belief he rested contented, as he believed himself under the most liberal and just Government on earth. By treaty he became an American citizen without doing a thing on his part. Continuing on in possession of his property, the possession was guaranteed to him by said treaty, until, shortly after peace was declared, the Mormon troubles broke out, when his relations were again disturbed by the U. S. Army quartering in his fort in 1857.

Being an illiterate man (as will be seen from making his mark to the lease), these intelligent army officers ingeniously worded the lease of his property to suit alone the interests of the Government, and got possession of a property in which he had put his earnings of a lifetime—his all on earth. Two years after this possession by the Army, the President, in violation of the sacred treaty stipulations, as will be seen hereafter, declared it a military reservation, thus defeating all efforts to complete his title, commenced under the Spanish laws and to be completed under ours.

This ruined him completely; it was his financial death-blow, from which he never afterward recovered. He died disheartened, leaving a destitute family, at the lack of good faith on the part of the United States Government.

The fact that the Government officers leased this property in question at \$600 per year, and were to pay \$10,000 for it if they purchased, shows that it was regarded as very valuable and of great use to the Army. The strong and well-built stone wall,

well laid in cement, was 18 feet high and 5 feet thick around an area of 100 feet square, and was pronounced the strongest fort of the kind in the West. The transportation of the cement, some thousands of miles over a wild country, with which to construct that cemented stone structure, cost alone several thousand dollars. The construction of this fort—the wall alone—in the wilderness, where material was so costly and so inaccessible, would be reasonably worth, from builders' estimates, \$18,000.

As a former citizen of Mexico he is entitled to have his rights respected and protected by treaty of 2d February, 1848. This treaty, among other things, declares (Art. VIII) that "property of every kind now belonging to Mexicans not established there (in United States) shall be inviolably respected. The present owners, the heirs of those, and all Mexicans who may hereafter acquire said property by contract shall enjoy with it guaranty equally ample as if the same belonged to citizens of the United States." Article IX declares that the Mexicans who * * * shall be incorporated into the Union of the United States" shall "be admitted * * * to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution, and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property."

It was further stipulated that "all persons whose occupations are for the common subsistence and benefit of mankind shall be allowed to continue their respective employments, * * * nor shall their houses or goods be burned or otherwise destroyed, nor their cattle taken, nor their fields wasted; * * * but if the necessity arises to take anything from them for the use of such armed force, the same shall be paid for at an equitable price." And that these treaty stipulations (Article XXII) "are to be as sacredly observed as the most acknowledged obligations under the laws of nature or of nations."

We ask, for the protection of the sacred rights of this Mexican subject, that the provisions of this treaty "be sacredly observed."

Under the laws of Mexico, and under its sanction and protection, he erected this fort and planted this colony, and had Mexico retained possession of the country his agreement with that Republic would have been carried out, and he to-day would be possessed of 3,898 acres of land. But by treaty he was made a citizen of the United States, and it is expected that the provisions of the treaty will be carried out if claimant so desires it.

"According to the modern law of war, the conquering state acquires the sovereign and absolute power over the conquered state, but it can not, in anywise, dispose of the private rights of the conquered subjects." (Lawrence's Wheaton Int. Law, 683, note 207.)

Grotius says that "by the consenting testimony of all ages and nations, good faith ought to be observed towards the enemy."

Bynkershoek holds that every other sort of fraud may be practiced toward him, but he "prohibits perfidy." "I allow of any kind of deceit," said he, "perfidy alone excepted; not because anything is unlawful against an enemy, but because when our faith has been plighted to him so far as the promise extends he ceases to be an enemy." (Wheaton's Int. Law, 685, and other authorities.)

The faith of this Government is pledged to protect this conquered subject in all of his rights. All law writers are overwhelmingly in support of this treaty obligation.

"The Constitution declares a treaty to be the law of the land." (Marshall, C. J., 2 Peters, 314.)

In conclusion, under the sacred provisions of that treaty this Government is not only pledged, but bound, to restore to James Bridger and his heirs whatever possessory rights he had under the Spanish laws, to wit: A patent to that 3,898 acres of land where Fort Bridger now stands, which was taken from him in violation of all treaty provisions, the highest law we have. To fail to do so, according to the highest law writer on international law, the nation would be guilty of "perfidy." This land was to have been granted to him by Mexico, and under the provisions of the treaty this Government is bound to issue a patent to this grant or pay the value thereof. (Art. IX.) There can be no other construction.

But claimant is moderate in his demands, and only asks to have the privilege of suing in the courts for perhaps one-tenth of his legitimate rights under that treaty.

Respectfully submitted.

C. M. CARTER,
Attorney for Claimant.

NOTE.—Hon. T. P. Ochiltree, to whom this case was referred last session, lost all the papers therein and can not now be found. Upon these proofs three favorable reports were made and the bill passed the House twice and Senate once, but not the same session. If not enough evidence before the committee upon which to base a favorable report, please do not report until we have time to file other evidence, which may be difficult to obtain.

EXHIBIT 19.

STATE OF MISSOURI, *County of Jackson, ss:*

Daniel M. Ross, being duly sworn, says that he was well acquainted with James Bridger at his fort bearing his (Bridger's) name in 1857, when the Utah army took possession of said fort; that the said Fort Bridger consisted of thirteen log houses built and located so as to form a hollow square in the center of an area of about 4,000 feet square, all of which was surrounded with a strong, solid, stone wall, laid in cement, about 18 feet high and 5 feet thick, with bastions at each corner. Outside said wall was a strong corral for stock about 200 by 300 feet square, and inclosed in like manner by a strong stone wall, laid in cement, about 10 feet high and about 2½ or 3 feet thick. There were also other outhouses.

Some of the houses were destroyed by the Mormons, but the walls were in good condition when the said army took possession of them.

The cement used in said walls was very expensive in that remote Territory, as it had to be transported an enormous distance, and likewise the large quantity of stone. Skilled labor commanded high wages, and said walls must have cost, and were worth when taken by the said army, at least \$30,000.

DANIEL M. ROSS.

Witness to signature:

JAMES H. O'BRIEN.

STATE OF MISSOURI, *County of Jackson, ss:*

On December 7, 1888, personally appeared before me, Henry P. Scott, a notary public in and for the said county and State, Daniel M. Ross, who subscribed his name and made oath to the foregoing statement; and I further certify that said Daniel M. Ross is a worthy citizen and is entitled to credit. Witness my hand and notarial seal.

HENRY P. SCOTT,
Notary Public.

My commission expires July 9, 1892.

EXHIBIT 20.

WASHINGTON, D. C., *January 12, 1889.*

SIR: In answer to yours of the 11th instant I have to say that it is impossible for me to obtain more definite evidence than that on file relative to the cost of construction of Fort Bridger and its value at the time the U. S. Army took possession in 1857, for the reason that since this claim has been pending before Congress Capt. James Bridger and nearly all of his witnesses have died.

I remain yours, respectfully,

C. M. CARTER.

General B. C. CARD,
Deputy Quartermaster-General, U. S. Army.

This report was transmitted to the president *pro tempore* of the United States Senate by William C. Endicott, Secretary of War, on January 24, 1889, accompanied by the following communication:

WAR DEPARTMENT,
Washington City, January 24, 1889.

SIR: I have the honor to acknowledge the receipt of Senate resolution of September 14, 1888, directing an investigation of the claim of James Bridger for value of improvements said to have been constructed by him at Fort Bridger, and for rent of property for use of troops in 1857.

In reply I beg to invite attention to the inclosed report, of the 16th instant, and accompanying papers, from the Quartermaster-General, showing the result of his investigation of the above-mentioned claim. I concur in his recommendation that an allowance of \$6,000 be made for the improvements, but that no sum be allowed for rental of the land, because the claimant did not own or have any title to the land, and because rent was promised only when his title to it was established.

All the evidence and papers in the case are transmitted herewith.

Very respectfully,

WILLIAM C. ENDICOTT,
Secretary of War.

The PRESIDENT *pro tempore* UNITED STATES SENATE.

In view of the foregoing your committee recommend the payment of said sum of \$6,000, as stated in the bill.

Your committee recommend, however, the following amendments:

Strike out the following words in lines 4 and 5 of the bill, "James Bridger or his legal representatives," and insert in lieu thereof the words, "the heirs of James Bridger, deceased."

Your committee also recommend that the title of the bill be changed so as to read as follows: "A bill for the relief of the heirs of James Bridger, deceased," and, as so amended, recommend the passage of the bill.

○

JOHN A. LYNCH.

JUNE 4, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 64.]

The Committee on War Claims, to whom was referred the bill (S. 64) for the relief of John A. Lynch, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Military Affairs of the present Congress, a copy of which is hereto annexed and made a part of this report.

Your committee concur in the conclusions stated in that report and recommend the passage of the bill.

Senate Report No. 593, Fifty-second Congress, first session.

Mr. PALMER, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 64.]

This bill provides that, in accordance with the findings of the Court of Claims—

The Secretary of the Treasury be, and he is hereby, authorized and required to pay to John A. Lynch * * * the sum of two thousand four hundred and sixty-six dollars and forty-nine cents, in full and complete satisfaction for services rendered, and expenses incurred and defrayed by him, the said John A. Lynch, to and for the United States at Cincinnati, in the years eighteen hundred and sixty-one and eighteen hundred and sixty-two.

As the purport of the bill is to provide for the payment of a certain sum of money, supposed to be found by the Court of Claims to be due to him, the committee have done nothing more than to ascertain the amount found to be due to the claimant by the Court of Claims and give effect to the actual finding.

A copy of the certified finding of the Court of Claims in this case will be found in Senate Miscellaneous Document No. 127, Fifty-first Congress, first session. (Exhibit A of this report.)

It is certain that the claimant, in the year 1861, under the direct authority of Col. R. M. Corwine, who held some appointment under Gen. John C. Fremont, performed some service for the United States at Cincinnati, Ohio, and that he was employed for a period of eight months. It may be collected from the copy of the proceedings of the Court of Claims, to which reference has been made, that the claimant in that court placed his right to recover upon the ground that for the time mentioned he acted under an appointment as captain and quartermaster, which, though the appointment was by the insufficient authority of Gen. Fremont, he either relied upon as valid or expected that it would afterwards be confirmed and did in fact discharge all the duties of captain and quartermaster. Whether the Court of Claims adopted that view or not, it is certain that it did not allow him the pay and emoluments of captain and assistant quartermaster, and it may be added that it is not certain that the Court of Claims made him any allowance whatever.

The court, in paragraph VI of the finding, enumerates certain allowances made by law and the Army Regulations to captains, assistant quartermasters, regularly appointed, which for eight months' service amount to \$2,621.49. But it is added by the court, "but the claimant by his petition in this court has sought to recover only \$1,262.96 for the same services." Unless it can be inferred from the words last quoted that the Court of Claims intended to allow the claimant the amount of

his claim, the record contains no finding in his favor. It is certain that the court did not intend to allow him the item of \$192 for forage for three horses, for he did not own or keep in service three horses, and his claim for the hire of horses was rejected for want of sufficient evidence.

It may be fair to conclude that the Court of Claims intended to make some allowance to the claimant, and if so, then the only possible inference is that the amount intended is that which he claimed in his petition, \$1,262.96. The court finds that he received \$125 on account of clerk hire, which ought to be deducted from the sum allowed:

Allowance.....	\$1, 262. 96
Deduct for clerk hire	125. 00
Balance	1, 137. 96

It is therefore recommended that the bill be amended by striking out the words "two thousand four hundred and sixty-six dollars and forty-nine cents," in the sixth, seventh, and eighth lines of the bill, and the words "one thousand one hundred and thirty-seven dollars and ninety-six cents" be inserted in lieu thereof, and the passage of the bill as amended be recommended.

APPENDIX.

[Senate Mis. Doc. No. 127, Fifty-first Congress, first session.]

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 10, 1890.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of the Court of Claims, filed April 7, 1890, in the aforesaid cause, which case was referred to this court by the Committee on Military Affairs of the Senate of the United States under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

The PRESIDENT OF THE SENATE.

[Court of Claims. Congressional case No. 4664. John A. Lynch, *vs.* The United States.]

At a Court of Claims held in the city of Washington on the 7th day of April, A. D. 1890, the court filed the following statement of case and findings of fact, to wit:

STATEMENT OF CASE.

The claim in the above-entitled case was transmitted to the court by the Committee on Military Affairs, United States Senate, on the 8th day of June, 1888. Luther H. Pike, esq., appeared for claimant, and the Attorney-General, by Assistant Attorney-General John B. Cotton, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The case was brought to a hearing on its merits on the 21st day of January, 1890.

I.

At the outbreak of the rebellion, in the year A. D. 1861, the claimant, John A. Lynch, was a citizen of the United States, a resident of the city of Cincinnati, in the State of Ohio, and by profession a lawyer.

In 1861 John C. Frémont, a major-general in the Army of the United States, was assigned to the command of the Department of the West, with headquarters at St. Louis, in the State of Missouri, and was clothed with extraordinary power and authority for recruiting, organizing, and equipping troops for his command in and out-

side the limits of his department, and for selecting and appointing, and directing the selection and appointment, of such officers and agents as he might deem necessary to assist him in the due execution of the powers he was so clothed with.

II.

General Frémont appointed Richard M. Corwine an officer under him, to wit, judge advocate with the rank of major, and sent him to Cincinnati, in the State of Ohio, with directions and authority to there recruit, organize, and equip troops for his command, and to arrange their transportation to his department.

The said R. M. Corwine, as part of his arrangements for recruiting, organizing, and equipping troops for and transporting them to General Frémont's command, induced the claimant to assist him therein, and appointed claimant nominally to the rank of captain, assistant quartermaster, with assurance that upon such appointment he would be duly commissioned the same in the Army of the United States.

III.

The claimant, relying upon this assurance and acting under that appointment from the said Corwine, gave his entire time for a period of eight months in the years A. D. 1861 and 1862 in assisting said Corwine. From the latter part of July, 1861, until on or about the 6th of September of that year he acted both as assistant quartermaster and commissary of subsistence, but from the 6th of September, 1861, to on or about the 31st day of March, A. D. 1862, he acted only as assistant quartermaster, and all the services he so rendered were arduous and valuable to the United States.

The claimant has never been paid anything for the services he so rendered or on account of the expenses he incurred necessarily whilst rendering them and paid out of his own means, such expenses being for rooms, light and fuel, and attendance thereon, and for clerical assistance, except a sum of \$125, and for transportation.

IV.

The claimant was on the 26th of November, A. D. 1862, commissioned regularly a captain and assistant quartermaster in the United States Army, but was not given rank to cover the service he had rendered antecedently. As such regularly commissioned officer he served faithfully and efficiently until he was discharged honorably after the suppression of the rebellion, and his accounts, found correct, have been closed in the Treasury Department.

V.

The claimant, by reason of being in active service in the field, was ignorant of and therefore unable to avail himself of the benefit intended for others and himself who had assisted General Frémont, by the act of Congress approved March 25, 1862, and by the acts amendatory thereof and supplementary thereto. He was ignorant of the existence of the commission at St. Louis, in the State of Missouri, which, in pursuance of said acts of Congress was created under and by General Orders of the War Department No. 64, of 1863, as also of the rules promulgated by the General Orders of the War Department No. 120, of March 24, 1864, for the payment of claims for such services presented to said commission, and, being so ignorant, he presented no claim to said commission.

VI.

By law and the Army Regulations of 1861, paragraphs 963 and 974, and the Revised Army Regulations of the same year, paragraphs 1068 and 1081, in force from the 31st of July, A. D. 1861, to the 1st day of April, A. D. 1862, had claimant been a regularly commissioned captain, assistant quartermaster in the United States Army, and so stationed and rendering said services at Cincinnati, in the State of Ohio, during said period of time, his army allowances and commutations would have been, as certified to the court by the War Department—each item aggregated—as follows: For pay proper (eight months), \$560; servant's pay, \$103.83; servant's clothing, \$20; subsistence, \$364.50; forage for three horses, if in actual service, \$192; quarters, \$192; quarter's fuel, \$119.16; office, \$240; office fuel, \$30 and by authority for payment for clerk-hire contained in the general appropriation acts for the support of the Army he would have had for one clerk, at \$100 per month, \$800; making a total of \$2,621.49. But the claimant by his petition in this court has sought to recover only \$1,262.96 for the same services.

VII.

The claimant during the eight months he so rendered the services unpaid for did not actually own and keep in service three horses, but in lieu thereof hired horses and vehicles for his transportation which was made actually necessary by the distances apart of the different bodies of troops he had to give attention to and he had constantly to traverse; but the amount of such expenditures has not been shown to the satisfaction of the court.

VIII.

The claimant received \$125 on account of clerk hire during said period of eight months' service, through said R. M. Corwine.

IX.

The claimant was loyal to the Government and cause of the United States throughout the war of the rebellion.

BY THE COURT.

Filed April 7, 1890.

A true copy.

Test, this 10th day of April, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

The first of the year was a very dry one, and the crops were much injured by the drought. The weather was very hot, and the crops were much injured by the drought.

The second of the year was a very wet one, and the crops were much injured by the drought. The weather was very hot, and the crops were much injured by the drought.

The third of the year was a very dry one, and the crops were much injured by the drought. The weather was very hot, and the crops were much injured by the drought.

The fourth of the year was a very wet one, and the crops were much injured by the drought. The weather was very hot, and the crops were much injured by the drought.

LUCRETIA WILLIAMS.

JUNE 4, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BRUNNER, from the Committee on Private Land Claims, submitted the following

REPORT:

[To accompany H. R. 922.]

Your committee, to whom was referred the bill (H. R. 922) to confirm to Lucretia Williams the title to 1 square league of land in the State of Louisiana, having duly considered the same, report as follows:

The claim is clearly a meritorious one, and has for some years been pending before Congress for action on the recommendations of the Commissioner of the General Land Office and the Secretary of the Interior, made under authority of the act of June 22, 1860, that it be confirmed. It rests upon undisputed record evidence of a Spanish grant to one Vincente Michele, in 1797, which was for 8 square leagues, 4 on each side of the river Sabine. Its early history fully appears in volume 4 of the American State Papers (Duff Green), the case being No. 68. In 1802 Michele sold part of his land, to wit, 4 leagues on the east side of the Sabine River, to one Joseph (or Isaac) Crow, and under the act of May 11, 1820 (3 Stat., 573), his claim was presented to the register and receiver at Opelousas, and they recommended confirmation to the extent of 1 league square, or 5,700 American acres, to the heirs or assigns of Isaac Crow. Why this recommendation was not executed does not appear in the record, nor is it known. The land afterwards passed through several hands until in 1833 it was conveyed to Frederick Williams, the father of the present claimant. By direction of the surveyor-general, dated May 7, 1841, the land was surveyed to the extent of 1 league on the east side of the ferry road, as recommended by the board of commissioners, and a copy of the plat of said survey appears in the record.

The claim was again considered by the board under the act of 1860, and again recommended for confirmation to the extent of 1 square league, and the Commissioner of the General Land Office, after a full and careful examination, approved their recommendation. Frederick Williams had meanwhile deceased, and therefore the Commissioner, in his letter transmitting the papers to the Secretary, says:

I am of opinion that the claim should be confirmed to the heirs and legal representatives of Frederick Williams, deceased.

The record contains a certified transcript of the proceedings of the eleventh judicial district court of Louisiana at the opening of the succession of Frederick Williams, which shows that his only child and sole heir is the present claimant, Lucretia Williams.

In transmitting the case to Congress, the Secretary of the Interior says:

I would suggest that a proviso be inserted to the effect that all sales and disposals of the lands by the United States to purchasers and settlers in good faith prior to final survey shall be confirmed, and indemnity therefor, at a rate of \$1.25 per acre, shall be paid to the grantee or his legal representatives.

The former part of this suggestion has been adopted in the bill, but the latter has been omitted; and your committee recommend that the omission be supplied by inserting after the word "confirmed" in line 13 of the bill the following:

And for the lands so sold indemnity scrip, locatable on public lands worth not more than \$1.25 per acre, shall be issued to said Lucretia Williams, her legal representatives, or assigns.

Your committee also recommend, with a view to clearness of meaning, that there be inserted after the word "there" in line 15 of the bill the following:

Who have not theretofore made final payment for their lands.

With these proposed amendments your committee report the bill favorably and recommend that it pass.

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SOUTHERN RAILROAD ASSOCIATION.

JUNE 4, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BULLOCK, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 982.]

The Committee on Claims, to whom was referred the bill (S. 982) for the relief of the Southern Railroad Association, lessees of the Mississippi Central Railroad Company, report it back to the House with the recommendation that it do pass.

Your committee append to this report Senate Report 278, which we concur in, which fully shows the basis of this claim.

Senate Report No. 278, Fifty-second Congress, first session.

Mr. PEFFER, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 982.]

The Committee on Claims, to whom was referred the bill S. 982, having had the same under consideration, beg leave to report as follows:

The bill proposes to pay a claim of the Southern Railroad Association, lessees of the Mississippi Central Railroad Company, for transportation of United States mails in April and May, 1861.

The committee, on the 9th day of February, 1892, referred the bill and accompanying papers to the Post-Office Department, as the following letter shows:

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., February 11, 1892.

SIR: I have the honor to acknowledge receipt, through reference from the Postmaster-General, of your letter of the 9th instant, with inclosures relative to the claim of the Southern Railroad Association, lessees of the Mississippi Central Railroad, for pay for mail service performed in 1861, and to inform you that the matter has been referred to the Auditor of the Treasury for this Department, who will furnish you with such information as he possesses.

Very respectfully,

J. LOWRIE BELL,
Second Assistant Postmaster-General.

Hon. W. A. PEFFER,
United States Senate.

On the 15th day of February, 1892, the Auditor of the Treasury for the Post-Office Department acknowledged receipt of the papers and returned them to the committee, with inclosures giving a full and detailed statement of the case, as follows:

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., February 15, 1892.

SIR: Your letter of the 9th instant, addressed to the honorable Postmaster-General, relative to the claim of the Southern Railroad Association, lessees of the Mississippi Central Railroad Company, and the accompanying papers, were forwarded to this office by the Second Assistant Postmaster-General February 11, 1892.

In reply I have the honor to state that there is nothing new to report in reference to this claim. I therefore take the liberty to inclose herewith a copy of the letter of my predecessor of July 19, 1888, addressed to Hon. J. B. Morgan, House of Representatives, which contains the status in brief of the claim in question. I also inclose a statement of his account as audited.

I am of the opinion that provision should be made for the payment of this claim.

Very respectfully,

T. B. COULTER,
Auditor.

Hon. W. A. PEPPER,
United States Senate.

TREASURY DEPARTMENT,
OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., July 19, 1888.

SIR: In reply to your letter of the 18th instant, requesting to be furnished with a brief statement of the facts in regard to the claim of the Mississippi Central Railroad Company for service on route No. 7412, in the State of Mississippi, in 1861, I have the honor to state that said company performed service on said route from April 1 to May 31, 1861, for which service they were entitled to receive \$7,700.

Settlement was made with the company upon a report from this office dated August 16, 1861, and payment made by a warrant on the Treasurer of the United States for \$855.63, issued in favor of I. Pierpont Morgan, attorney for George Peabody & Co., of London, and what were termed auditor's drafts on postmasters, amounting to \$6,844.37, were issued to William Goodman, president of the company. Of this amount drafts amounting to \$4,636.01 were not paid by the postmasters on whom drawn, but were returned to this office canceled and placed to the credit of the company, and it is this sum that the company now claim is due to them.

This claim differs from the great bulk of antebellum claims in the fact that settlement in full was made in August, 1861, and that the drafts of the Department issued in payment, amounting to \$4,636.01, were not honored by the parties on whom drawn, but were returned to the Department as uncollectable. The company had the right to demand warrants upon the Treasurer for the amount due them in 1861, but the correspondence shows that by personal arrangement with the then Postmaster-General, Hon. Montgomery Blair, they accepted the before-mentioned drafts. Payment of the claim has been requested repeatedly during the past twenty years. It has been several times certified to Congress, but no appropriation has been made. The last time it was certified was in 1886, and you will find it on page 34, House Ex. Doc. 210, Forty-ninth Congress, first session.

I know of no reason why this claim should not be paid, but lack of appropriation.

Very respectfully,

D. McCONVILLE,
Auditor.

HON. J. B. MORGAN,
House of Representatives.

STATEMENT OF ACCOUNT.

The Mississippi Central Railroad Company, contractor, in account with the United States.

DR.

Route 7412:

To the following-described Auditor's drafts, viz:

No. 8680, dated October 6, 1860, on E. J. Bracken, late postmaster, Holly Springs, Miss.....	\$1, 282. 86
No. 962, dated May 17, 1861, on G. M. Dugan, late postmaster, Grand Junction, Tenn.....	107. 95
No. 963, dated May 17, 1861, on E. J. Bracken, late postmaster, Holly Springs, Miss.....	605. 73
No. 2391, dated August 17, 1861, on William Delay, postmaster, Oxford, Miss.....	2, 955. 55
No. 2392, dated August 17, 1861, on E. J. Bracken, postmaster, Holly Springs, Miss.....	530. 00
No. 2393, dated August 17, 1861, on J. L. Kendal, late postmaster, Oxford, Miss.....	280. 00
No. 2394, dated August 17, 1861, on D. L. Mosely, late postmaster, Oxford, Miss.....	132. 02
No. 2395, dated August 17, 1861, on L. Lawshe, late postmaster, Spring Dale, Miss.....	15. 00
No. 2396, dated August 17, 1861, on S. C. Baines, late postmaster, Varden, Miss.....	120. 00

No. 2397, dated August 17, 1861, on A. Roy, postmaster, Middleton, Miss	\$30.00
No. 2398, dated August 17, 1861, on B. Gerell, late postmaster, Lockhart's Store, Miss	4 .86
No. 2399, dated August 17, 1861, on J. M. Kelly, postmaster, Torrance, Miss	2 .00
No. 2400, dated August 17, 1861, on Peter Scales, postmaster, Scales, Miss	14.00
No. 2401, dated August 17, 1861, on R. R. Campbell, postmaster, Richland, Miss	170.00
No. 2402, dated August 17, 1861, on William Priestly, late postmaster, Canton, Miss	200.00
No. 2403, dated August 17, 1861, on J. A. Cason, postmaster, Durant, Miss	145.90
No. 2404, dated August 17, 1861, on Thomas Allen, postmaster, Duck Hill, Miss	47.50
No. 2405, dated August 17, 1861, on T. J. Dobyns, postmaster, Goodman, Miss	50.00
No. 2406, dated August 17, 1861, on W. H. Hawkins, postmaster, Grenada, Miss	30.00
No. 2407, dated August 17, 1861, on A. D. Moore postmaster, Mays Creek, Miss	10.00
No. 2408, dated August 17, 1861, on L. Falkenberg, postmaster, Waterford, Miss	15.00
No. 2409, dated August 17, 1861, on T. J. West, postmaster, Water Valley, Miss	30.00
To warrant No. 7164, August 16, 1861, on assistant treasurer at New York	855.63
To balance	4,636.01
	12,336.01

CR.

Route 7412:

By transportation from April 1 to May 31, 1861, in accordance with order of Postmaster-General dated July 25, 1861	7,700.00
By the following Auditor's drafts returned and canceled: .	
No. 2391, on William Delay, postmaster, Oxford, Miss	2,955.55
No. 2392, on E. J. Bracken, late postmaster, Holly Springs, Miss ..	530.00
No. 2393, on J. L. Kendal, late postmaster, Oxford, Miss	280.00
No. 2394, on D. L. Mosely, late postmaster, Oxford, Miss	132.02
No. 2396, on S. C. Baines, late postmaster, Varden, Miss	120.00
No. 2397, on A. Roy, postmaster, Middleton, Miss	30.00
No. 2398, on B. Gerell, late postmaster, Lockharts Store, Miss	49.86
No. 2399, on J. M. Kelly, postmaster, Torrance, Miss	23.00
No. 2400, on Peter Scales, postmaster, Scales, Miss	14.00
No. 2402, on William Priestly, late postmaster, Canton, Miss	200.00
No. 2403, on J. A. Cason, postmaster, Durant, Miss	145.90
No. 2404, on Thomas Allen, postmaster, Duck Hill, Miss	47.50
No. 2405, on T. T. Dobyns, postmaster, Goodman, Miss	50.00
No. 2406, on W. H. Hawkins, postmaster, Grenada, Miss	3.18
No. 2407, on A. D. Moore, postmaster, Mays Creek, Miss	10.00
No. 2408, on L. Falkenberg, postmaster, Waterford, Miss	15.00
No. 2409, on T. J. West, postmaster, Water Valley, Miss	30.00
	12,336.01
By balance	4,636.01

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., February 15, 1892.

T. B. COULTER,
Auditor.

Hon. W. A. PEFFER,
United States Senate, Washington, D. C.

In consideration whereof, the committee recommend the passage of the bill.

PENSION DEFICIENCY BILL.

JUNE 4, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SAYERS, from the Committee on Appropriations, submitted the following

REPORT:

[To accompany H. R. 9118.]

The Committee on Appropriations, to whom was referred House Executive Document No. 229, submitting an estimate of \$7,674,332 to supply a deficiency in the appropriation for the payment of pensions for the fiscal year 1892, report the accompanying bill making an appropriation of said amount, and also to supply a deficiency in the appropriations for the contingent fund of the House of Representatives, as follows: For materials for folding, \$4,000, and for miscellaneous items and expenses of special and select committees, \$10,000.

THURSDAY, *May 26, 1892.*

The subcommittee of the Committee on Appropriations having in charge the question of the pension deficiency this day met, Hon. Joseph D. Sayers in the chair.

STATEMENT OF GREEN B. RAUM, COMMISSIONER OF PENSIONS.

The CHAIRMAN. How much was actually expended for pensions during the fiscal year 1891?

Gen. RAUM. I will show you the exact dollars right here.

The CHAIRMAN. If you please.

Gen. RAUM. You do not want salaries in it?

The CHAIRMAN. Everything.

Gen. RAUM. \$118,548,959.71.

The CHAIRMAN. How much was expended during the first quarter of that year?

Gen. RAUM. Let me see if I have it here. You know that I would have to get it from the books, because I have not got it in that report. Did not I furnish that the other day by months for that fiscal year?

The CHAIRMAN. But it does not include the salaries for your office force here?

Gen. RAUM. Oh, no.

The CHAIRMAN. This expenditure for the fiscal year 1891, which you have named, does not include the payment of your office force in the city of Washington?

Gen. RAUM. Oh, no; not at all. It does not include that.

The CHAIRMAN. How much did you have on hand unexpended on the 1st day of May of the present year?

Gen. RAUM. Well, let me see. I will give you that, as I do not think I have it here. I did not know exactly what you would want, but of course I can telephone down and get that, so I can give you that exactly.

The CHAIRMAN. What do you estimate for your expenses for the months of May and June?

Gen. RAUM. I can give you those figures exactly from this paper [handing paper].

The CHAIRMAN. I do not think you have any estimate for May and June.

Gen. RAUM. It is right there, \$26,000,000.

The CHAIRMAN. Your estimate for your expenditure for May and June is—

Gen. RAUM. \$26,811,772.82.

The CHAIRMAN. That does not very much exceed your expenditure for May and June of the last fiscal year?

Gen. RAUM. I will tell you how I arrive at this. I take February and March of this year, which is the same payment, that is, the same people, and I have those figures exactly. That is \$25,811,772.82, and I add a million to that. Now, for February and March I have the exact figures, and it is exactly the same agencies we have to pay for May and June. Of course, there are quite a number of people who died in the mean time, but I add a million, and that would make \$26,811,772.82. That is as near an estimate as I can make.

Q. When are you compelled to have this money?

Gen. RAUM. You understand, we have got \$19,000,000 subject to this. It is—

The CHAIRMAN. I want to know what is the latest date that will be necessary to pass this deficiency bill?

Gen. RAUM. It ought to be passed really before the 4th of June if you could do it. I have the requisitions all prepared now to cover this exact amount.

The CHAIRMAN. This is the 26th, that does not leave us many days.

Gen. RAUM. I am going before the Appropriations Committee of the Senate this morning, and I am going to present this same matter to them so they will have it all ready on hand, so if you pass an appropriation they will not have to discuss it.

The CHAIRMAN. Just tell me, suppose we can not pass it by the 4th day of June; suppose that it does not become a law by the 4th of June; what I desire to know is, What is the latest date, without detriment to the service, it can be passed?

Gen. RAUM. Oh, well, there will be no serious disturbance about it; there will be a little delay. We will distribute this \$19,000,000 first.

The CHAIRMAN. What is the latest date without serious injury to the service that a bill can be passed?

Gen. RAUM. I should say the 10th or 12th, or somewhere along there. Everybody wants their money. You take these Rock Creek Park people, they are all rich nearly, but they want their money, and everybody wants their money; but there will be no disturbance about it if there is a delay of four or five or six days.

The CHAIRMAN. Now, Governor Dingley wanted to be present to-day, and I got a letter from him this morning, but it was too late to notify you, saying he would like to be present at this examination, and Gen. Henderson is very anxious he should be here, and if there is no objection I would suggest we delay this.

Gen. RAUM. I will say if Mr. Dingley will be here during the day, I can come in at any hour that will suit your convenience. My time is occupied from 9 o'clock in the morning until 4 o'clock in the afternoon in the office, and I am at your bidding. I will drop anything I have and come up here. You can reach me by telephone in a moment.

The CHAIRMAN. This balance has been covered into the Treasury?

Gen. RAUM. Not exactly what you call covered in in a technical sense. It is in the Treasury and it has not been drawn out.

The CHAIRMAN. It has not been drawn out, and yet it requires legislation for you to avail yourself of it?

Gen. RAUM. Yes, sir.

The CHAIRMAN. Why is it you suggest we should merely reappropriate that?

Gen. RAUM. Well, you know it is already appropriated.

Mr. HOLMAN. And it has not gone back to the Treasury.

The CHAIRMAN. I will let you know when we will want you.

Gen. RAUM. I followed simply the suggestion of Secretary Foster; he and I conferred about it.

Mr. HOLMAN. I do not see very well why that fund is not available, it is not covered back into the Treasury.

Gen. RAUM. It is not available for this fiscal year,

Mr. HOLMAN. It was simply available until the 1st of July of last year?

Gen. RAUM. Yes, sir.

The CHAIRMAN. You have not used any money appropriated this year to pay the pension claims which were actually due after the first day of the present fiscal year?

Gen. RAUM. Oh, yes. Of those items five millions and something were paid out of the fund appropriated for this year.

The CHAIRMAN. Why do you do that?

Gen. RAUM. The Treasury officers hold here is an appropriation for this fiscal year, and everything that is payable, or rather everything that is paid, this fiscal year must be charged to it.

Mr. HOLMAN. Now, as a matter of fact you expended of the appropriation for the present year some five million for liabilities that were actually incurred prior to the 1st of July last year?

Gen. RAUM. Oh, yes, sir.

Mr. O'NEIL. You say here that the money actually paid for pensions in 1891 was \$118,000,000.

Gen. RAUM. Yes, sir; \$118,548,959.71.

Mr. O'NEIL. Now, you send up here payments on account of pensions for the fiscal year 1891, \$129,000,000; what does that mean?

Gen. RAUM. I do not see this.

Mr. HOLMAN. You have got to add to that \$129,000,000, the amount paid for this current year, out of the fund for this year, chargeable in fact to last year; that would make in the neighborhood of \$134,000,000.

Gen. RAUM. Let me take this back with me.

Mr. O'NEIL. That is from you. You can send to the Treasury and get a duplicate one. Let me ask you another question.

Mr. HOLMAN. That \$129,000,000 is to be increased by the amount you have paid out for the current year.

Mr. O'NEIL. You say you have on hand now \$19,000,000?

Gen. RAUM. Yes, sir.

Mr. O'NEIL. When you say you have on hand \$19,000,000, do you mean you have it on hand to-day?

Gen. RAUM. For the months of May and June.

Mr. O'NEIL. May is pretty well gone.

Gen. RAUM. Now, that leaves a balance of nearly \$6,000,000.

Mr. O'NEIL. Then you have, according to your statement, \$4,000,000 or \$5,000,000 in the hands of agents.

Gen. RAUM. I had the agents all telegraph to me on the night of the 30th of April their balances and that amounted to \$10,689,566.16.

Mr. O'NEIL. How much did you have at that time?

Gen. RAUM. As I said, \$4,725,000 was in transit; that is, that we were sending out to the agents; then we had \$3,722,884.62 which had not been drawn against, making in all \$19,000,000. Now, I had that available for the two months. Now, the warrants that would be required for the two months (I took the last payments of the same agents for February and March) and that was \$25,811,772.82, and I added a million.

The CHAIRMAN. Can you do this for me, can you telegraph to-day to your agents and get from them the balances on hand on the first day of this month? I want to ascertain what balances there were in the hands of your agents on the first day of this month.

Mr. O'NEIL. He has got that.

Mr. HOLMAN. No, sir; the last day of April.

Gen. RAUM. Yes, sir; I will do that.

Thereupon the committee adjourned.

WEDNESDAY, June 1, 1892.

The subcommittee of the Committee on Appropriations, having in charge the general deficiency bill, this day met, Hon. Joseph D. Sayers in the chair.

STATEMENT OF GREEN B. RAUM, COMMISSIONER OF PENSIONS.

The CHAIRMAN: I notice that in your hearing before the subcommittee on the pension appropriation bill, that you used this language: "Now, I can state for the information of the committee that from the present condition of the work and the appropriation I see no occasion for a deficiency in any branch of the service for this fiscal year." Now, that was the opinion that you gave in February last. Why is it that the subsequent facts do not correspond with the opinion you expressed then?

Gen. RAUM. Well, you will of course understand that the estimates that executive officers make from time to time are based upon the best judgment they have in regard to the matter at the time, and that was the judgment I had of the condition of affairs at that time, but the work has progressed well and the result has been that instead of being able to get along with the amount that was appropriated for there will be a deficiency approximating \$7,674,000. Of course that I arrive at as nearly as I can, showing you the manner in which I get at it, and you can judge as well as I can whether that is correct or not.

The CHAIRMAN. Now, in your letter of May 28, to Mr. Courts, you state that there was an available balance on May 26, 1892, for pensions in the hands of pension agents and in the Treasury amounting to \$6,422,316.85?

Gen. RAUM. Yes, sir. You recollect you requested I should telegraph to the pension agents.

The CHAIRMAN. And this is in answer to that?

Gen. RAUM. Yes, sir; I telegraphed to those agents, and I received from them telegrams which gave me the balances which—I believe I gave you the details—which gave me the details of their balances, making, as I reported to Mr. Courts, \$3,229,786.83.

The CHAIRMAN. That is in the hands of the agents?

Gen. RAUM. In the hands of the agents at the close of business hours May 26, 1892.

The CHAIRMAN. And in addition there was \$3,192,530.02 in the Treasury?

Gen. RAUM. Yes, sir; so that there was an available balance for pensions on the 26th of May, at the close of business, of \$6,422,316.85. Now, we have had three business days since, we have had the 27th, the 28th, and the 31st, yesterday. Now, what may have been expended during those three days of course it is not for me to say, and I can not say.

The CHAIRMAN. Now, please give as briefly and lucidly as you can the reasons, accompanied by figures, for your estimate of \$7,674,332 as a deficiency?

Gen. RAUM. During the months of February and March the two pension agencies which paid during the months of May and June reported an actual expenditure of \$25,811,772.82. One of them has just closed its payment for May and the other will begin payment on the 4th day of June. Now, those two agencies paid that amount during those two months, and there has been something of course added during the last few months to their roll, and of course there has been some few dropped off, too. I added \$1,000,000 as an estimate of the increase to their rolls to the actual amount that they paid out during the months of February and March, which made the sum of \$26,811,772.82. Then I add the balances reported by telegrams in the hands of pension agents on the 30th day of April, 1892, at the close of business hours, which was \$10,689,566.16. I ascertained that of the requisitions which I had made upon the Treasury \$4,725,000 had not been sent out; that is, was *in transitu* and had not reached the agencies. There was a balance on the 30th of April, 1892, at the close of business in the Treasury which had net been estimated for of \$3,722,374.62. Now, those three items aggregate a sum of \$19,137,440.78, which being deducted from the \$26,811,772.82 leaves \$7,674,332.04 as an item which I thought was required to make the payment for the months of May and June.

The CHAIRMAN. Now, how long will this money on hand on the 26th day of May, amounting to \$6,422,316.85, last you, in your opinion?

Gen. RAUM. Well, that will make—

The CHAIRMAN. I mean how many days; how long, in your opinion, will that amount last from the closing hours of the 26th of May?

Gen. RAUM. Well, now, I will explain to you in regard to these payments—

The CHAIRMAN. Please give us your opinion, and then you can give us the reasons why. I am asking how long you think this sum of \$6,422,316.85 will last you from the close of business hours of May the 26th, 1892?

Gen. RAUM. I think that we will have money enough in the hands of these agents who are making their quarterly payments to pay the people who receive their money at the counter.

The CHAIRMAN. That is not the question.

Gen. RAUM. I will show you that is the question.

The CHAIRMAN. I want to know in point of time how long this sum of money will last the office from May the 26th, 1892, and then you can give your reasons.

Gen. RAUM. Well, it is quite impossible for me to give a reasonable estimate of the amount paid out for the six days and I could not tell you that, but I was going to show you the mode in which those payments would be made so that you will see the delay of four or five days will not make any material difference. There are a certain number of people who go to the counter and are paid over the counter while the great body of pensioners are paid through the mail. Their vouchers are received, properly executed, put in the hands of the agent, and he draws his check and sends it through the mail, but there is quite a large number of pensioners at every agency who go to the counter and receive their money there. Now, all the agents endeavor to make these payments in two or three days; that is, they commence on the morning of the 4th and they usually get through with the payments in two or three days and some of them almost get through in one. Now, in the distribution of this money I have put such sums with those agents as seems to me will enable them to make these counter payments; then as far as the residue is concerned, why of course they can not check until they have the money and the people will not be there to demand the money because the voucher has been sent in by mail, and a delay of four or five days can not materially affect the credit of the Government or injure the pensioners themselves.

The CHAIRMAN. General, I think we are entitled to your opinion as to how long this sum will last you from the 26th of May, 1892, and the reason I insist upon an opinion from you is in order to control the action of the committee. That is the reason why I insist upon it, and not for the purpose of entrapping you or anything of that kind.

Gen. RAUM. Oh, no; I do not think that.

The CHAIRMAN. We merely want your opinion, if it can be gotten.

Gen. RAUM. I am not expecting anything of that kind from any member of the committee, and I want to give the best judgment I can.

The CHAIRMAN. Of course, I well understand, you are liable to be mistaken.

Gen. RAUM. The difficulty about a statement as to how long it will last—

The CHAIRMAN. We appreciate the difficulty, we appreciate it fully, but still we would like to have your opinion, so we can shape our action in accordance with it.

Gen. RAUM. You know these agencies that are to pay on the 4th of July will use the bulk of this money; the other agencies do not use very much, just a small amount during the month of June. Those agencies, if they had all the money to their credit, would make these payments very promptly; they would pay their counter people in two days, and then go to work and issue out the checks for the balance in the course of a week or ten days; that is the way they work it. Now, I think the best answer I can make to you is that they will have money enough, I think, to pay all the people who come to the counter, and of course if that was all they had that would only last until about the 6th, say the 4th, 5th, and 6th, but some of them may have a good deal more than that.

The CHAIRMAN. Do you think if a bill covering this deficiency should pass by the 5th of June it would be in time?

Gen. RAUM. Oh, yes, sir; entirely so.

Mr. O'NEIL. When Gov. Sayers asked the question in regard to your former statement, some time in January, you said you thought you had money enough to pay all this year and there would be no deficiency; and you said you, like all other executive officers, would be apt to make a mistake about that.

Gen. RAUM. I do not recollect the exact phraseology.

Mr. O'NEIL. Gov. Sayers read it, and I do not recollect it either; but as a matter of fact you are putting 30,000 less new names on the roll than you estimated at that hearing. That is, on the 30th of April you had 840,000 and your estimate was that you would have 907,000 on the 1st of July, 1892. Now, you say, or said the other day, that you would not put on over 15,000 for May and June, and that

would bring you at least 30,000 short on your estimate when you thought you would have money enough without bringing in a deficiency?

Gen. RAUM. Well, you have that statement I gave you, which was the best figures I could get at the time.

Mr. O'NEIL. Now, I want you to take a few figures I have made, and I wish you would just figure out and show me where I am wrong, if you will.

Gen. RAUM. Is that in regard to this deficiency?

Mr. O'NEIL. Oh, yes. You had 676,160 pensioners on the first day of July, 1891; on the 30th of April you had 840,155. Now, you required to pay these 676,190, according to your statement, \$89,247,200. Now, you estimate up to the 30th of April that you added 189,521 names, which on your average estimate of \$138 would require \$26,153,898. Now, the average payment you have always estimated for six months, and that would take \$11,939,823. That leaves two months of June where you have stated you would get 30,000 more names, which would require \$4,140,000, and one month's pay for this on an average would make \$764,031. I figure all this up to be \$132,244,952. Now, of course there may be something I do not know of, that I haven't got, but I wish you to take that and figure up and let me know just where I am wrong. You see another thing, that the Treasury Department on the 26th of May sends a statement in which they have included all the May drafts and everything except the June drafts, and they have paid out \$128,171,186, which would leave a balance on hand of \$5,001,899, making a difference between their statement and yours of over a million. I wish you would look that up.

Gen. RAUM. In regard to the balance in the Treasury, it is not necessary for me to take the figures of the Department in regard to the remittances they have made. I draw my requisitions through the Secretary of the Interior upon the Treasury Department for certain sums of money in favor of these various pension agents, and I charge the agencies with those requisitions, and they can not take any money out of the Treasury without a requisition for it, and I know that is right, that is, if the people are able to add up figures and give the proper results, because there is a balance on my books that I have not drawn requisitions for. The way I have reached these balances is by ascertaining from the pension agents the amount of money they have in their hands to their credit, and then the amount of the requisitions which have not been honored in the hands of the Secretary of the Treasury.

The CHAIRMAN. In making your calculation you have taken into consideration all your requisitions that have not been honored?

Gen. RAUM. Yes, sir; that is, I add the amounts for which I have not drawn requisitions and that gives the balance. Now, as I told you, there was a sum of \$3,192,530.02 that I had not drawn requisitions for, and of course you understand that it can not be drawn out of the Treasury until the requisitions are approved by the Secretary. You will understand when we make our requisitions upon the Treasury and they are approved why it is for them to place the money to the credit of these people; it is not our province to do that.

Mr. O'NEIL. There is no question about one thing, that the money has been spent, and it is information as far as bookkeeping methods are concerned that I want to find this out.

Gen. RAUM. I will say to you this: I have had considerable experience in the matter of making estimates of receipts as well as disbursements, and after all when an officer does the very best he can in regard to the receipts of the Government and the disbursements such as we make through the Pension Office, it is finally only an estimate; it is the best judgment as to what will be received and what will be expended.

The CHAIRMAN. If Mr. O'Neil will allow me to interrupt you for a moment, does this estimate for deficiency embrace only the amount which will be actually paid between the 26th day of May and the 1st day of July?

Gen. RAUM. Yes, sir.

The CHAIRMAN. Which will be actually paid out?

Gen. RAUM. Actually paid out.

The CHAIRMAN. It does not include or embrace those certificates which will have been issued but not paid until after the next fiscal year begins?

Gen. RAUM. No, sir; it does not include that at all; there is a certain amount which goes over every year.

The CHAIRMAN. You make no provision for that.

Gen. RAUM. No, sir, not at all. There is a certain amount of checks of these agents that float around the country, and I suppose it is pretty much the same every year.

Mr. DINGLEY. To follow up the line of inquiry that was suggested by Governor Sayers, in November last the Secretary of the Treasury as well as yourself estimated on a basis of expenditure up to that time for the current fiscal year for pensions in the neighborhood of \$125,000,000?

Gen. RAUM. No, sir; I did not make that—

Mr. DINGLEY. Well, the Secretary did on that basis; it would have been on that basis if it had run through the last six months with no larger expenditure than the first six months. Now, what I wish to get at is this: The expenditure ran along very evenly about ten and a half millions a month until February or thereabouts, since when it has increased about \$2,000,000 a month and it has been running forward about twelve and a half million dollars a month. Now, the inquiry I make, following up the line of inquiry of Gov. Sayers, is what in the administration of the office has caused in the last three months this increase in the disbursement for pensions?

Gen. RAUM. Well, it is the steady—

Mr. DINGLEY. What has led to the granting of about \$2,000,000 a month more pensions since February?

Gen. RAUM. It has been the steady growth of the roll.

Mr. HOLMAN. Have you a statement there showing the state of the rolls for each month?

Gen. RAUM. Yes, sir.

Mr. HOLMAN. Of recent months?

Gen. RAUM. I have here, judge—I can furnish you that—I have here a consolidated statement which you probably have not taken time to examine. I now make a quarterly statement of certificates, first daily, weekly, and monthly, showing the value of certificates issued from day to day, and on the sixth month I consolidated it, and on the seventh month, and on the eighth, and on the ninth, and on the tenth.

Mr. HOLMAN. The tenth is the last?

Gen. RAUM. Yes, sir. Now, if it would not weary the committee I would like to call your attention for a moment to these figures at the end of the six months as consolidated here.

Mr. HOLMAN. That was what month?

Gen. RAUM. December the 31st. At the end of December 31 the average payment for the six months was \$134.32 and the average monthly rate of the pensions granted during that period was \$10.22. Now, the seventh month shows that the average first payment was \$135.93 and the average monthly rate was \$10.18; the one was a very slight increase and the other was a reduction of 4 cents. Then the eighth month showed that the average first payment was \$137.22 and the average rate was \$10.09. That, you notice, was a reduction of 9 cents a month on the average of the rate. Now, the ninth month showed that the average first payment was \$138.82 and the average rate per month was \$10.10, a variation of only 1 cent in the rate. Now, we have the consolidated report for the tenth month and that shows that the average first payment was \$138.86 and the average monthly rate was \$10.13, so that you see it is very steady just now, first as to the average first payment, and second as to the average monthly rate which is being granted. There has been no sudden jogs in that respect, but there has been a very large growth in the pension roll. I have issued in ten months 255,448 certificates. Now, of those there were originals 189,521.

The CHAIRMAN. The originals come as well under the act of June, 1890, as previous ones?

Gen. RAUM. Yes, sir. The number of increases during that month was 65,049, and there were 878 restorations. You see there, judge, that the bulk of the office is working on original claims.

Mr. HOLMAN. How was the falling off during the same period, the reduction of your roll?

Gen. RAUM. The reduction has been very great this year.

Mr. HOLMAN. How much in the ten months, if you have got it by months?

Gen. RAUM. I have it here. The roll at the end of April 30 was 840,185. Now, I can not give you the accurate figures there as to falling off by simply adding the originals and restorations to those on the roll before and deducting those, because I do not know that all those certificates have been entered that were issued, but by the 15th of June I will have that entire statement, and if you are in session then I will be glad to lay it before you so you will know exactly the number of persons who are dropped, which will probably amount to 32,000 on the roll this year.

Mr. O'NEIL. You dropped 25,000, according to the way you told me you figured it, for the ten months as I have figured it out.

Mr. DINGLEY. Do the figures so far show that the expenditure for May and June will be as large as that of March and April?

Gen. RAUM. The same agencies pay.

Mr. DINGLEY. Now, to return to my question: Is there anything, so far as you know, in the administration of the office and in your working up cases that would have led to an increase in March and April of two millions a month?

Gen. RAUM. Have you the Secretary's report there? I do not carry in my mind the classification of the agencies.

Mr. DINGLEY. I thought perhaps in your method of working up the cases you might have prepared a lot of material which brought cases to a head to an unusual extent?

Gen. RAUM. No; I will tell you, the agencies that pay in February and March and which pay again in May and June pay a little more money habitually.

Mr. O'NEIL. You know these large payments of those months were caused as much by the increased number of claims you allowed and their very heavy first payments—

Gen. RAUM. Well, those payments—

Mr. O'NEIL. You know you put on quite a large number, and of course if you did not put on as much during May and June as in March and April then the first payments will be remarkably less. That seems to me to be the main point.

Mr. DINGLEY. My query is whether or not the payments during May and June will be as large as those during March and April so far as you know?

Gen. RAUM. Oh, yes.

Mr. DINGLEY. Where they went up two millions a month; that is, in estimating the requisite deficiency shall we assume that your payments during May and June will be as large as during March and April?

Mr. O'NEIL. Bear in mind you told us the other day that you are only going to put on about 30,000 for May and June, and you must have put on a great deal more than that for March and April. You just whooped them up during those months, and as you increase the number you increase the first payments, and the first payments are the heaviest end of your bill all the time. Where you average \$138 for the first payment you just everlastingly let the money go from the Treasury on this pension appropriation.

Gen. RAUM. I put 15,000 on in April.

Mr. O'NEIL. No; only 12,888 according to your monthly statement. You must have run the number up somewhere, because you recollect your total average for ten months was 189,521, but you bring your average up very high by putting on a very large number some of the months. You must have increased some months very largely in order to get 189,521 for ten months, for your average must have been close on 19,000.

Mr. HOLMAN. The General can furnish a statement of the increase for each month and also the decrease for each month.

Gen. RAUM. Yes, sir; I can furnish a statement for each month.

Mr. O'NEIL. That seems to be the whole thing, to figure how much less on account of first payments you will need than during those two months.

Gen. RAUM. You know we required so much money for the months of February and March for those two agencies, and my judgment is we required just about a million more.

Mr. O'NEIL. If you propose to keep up the average of the first payment, yes, unquestionably. That seems to me to be the whole thing.

Mr. DINGLEY. On the 26th of May you had an available balance of \$6,422,316. Now, assuming you used in proportion to that which you have been using, which is a little less than a half a million each business day, that would last you about fifteen business days?

Gen. RAUM. You know the payments made from the counter are made—

Mr. DINGLEY. Or are they made at the beginning of a month more than at any other time?

Gen. RAUM. We endeavor to have those payments made very promptly, and the agent usually gets the counter payments made within two or three days.

Mr. DINGLEY. Do you still estimate a deficiency of \$7,674,332?

Gen. RAUM. I think that is not too much, in my judgment.

Mr. DINGLEY. That gives you \$14,000,000 for use from the 26th day of May; three business days in May—

Gen. RAUM. And three in June. The quarterly payment is on the 4th of June, and now you will have six business days for reducing this balance of \$6,422,000.

Mr. DINGLEY. The balance unexpended that was made on the last deficiency bill is \$8,834,079?

Gen. RAUM. Yes, sir.

Mr. O'NEIL. According to your monthly statement, during February you added on the roll 23,970 new names, and during March you put on 20,228 new names. That is 44,000 names in those two months, which were paid out of March and April drafts. Now, if you do not expect to put on but 15,000 during May and 15,000 during June, you will not need as much money as you needed when you put on those 44,000 names?

Gen. RAUM. Of course there will be some of those people, as has always been the case, to whom certificates are issued who will not get on the roll in time to be paid.

Mr. DINGLEY. Five and a half millions have been paid out during this fiscal year out of the appropriation for 1892 that were allowed during the previous fiscal year, and if they had presented the certificates in season would have been paid out of the appropriations for that year.

Mr. HOLMAN. That is a usual thing.

Gen. RAUM. Yes, sir.

Mr. HENDERSON. What is the deficiency you are requiring for this fiscal year?

Gen. RAUM. Seven million six hundred and seventy-four thousand three hundred and thirty-two dollars.

Mr. HOLMAN. The appropriations for 1891 were in excess of the expenditure about \$8,000,000.

Gen. RAUM. Substantially.

Mr. HOLMAN. How did that occur? Was there any particular cause for it? Was there a less number of certificates issued than you anticipated, or what was the reason?

Gen. RAUM. Well, the estimate was based upon the experience of former work of the office, and the first payments turned out not to be so great as they had been in former years.

Mr. HENDERSON. A great many old claims were relieved by allowances under the act of June 27, 1890?

Gen. RAUM. Yes, sir; and the result was the first payments were not so great and the appropriation was excessive; more than was needed. A great deal of pains was taken in making that estimate based upon the experience of former years, but we missed it.

Mr. HENDERSON (to Mr. O'Neil). Now, I do not thoroughly understand the proposition based upon your figures, and I will thank you to explain it again. I was unable to be present until just now, having to see my family off on the train.

Mr. O'NEIL. I said that on the 1st of July, 1891, the Commissioner reported they had on the roll 676,160 names; that up to the 30th day of April they had added 189,521 names, and his average first payment is \$138, which made these 189,521 cost \$26,153,898. Now, they have always estimated six months' pension for all those, which would be a fair average beginning from the first of the year until the end of it, and that would take \$11,939,823. That left two months, and the General stated he would get about 30,000 more names, which would require \$4,140,000, and one month's pay for those on an average would make \$764,031, and the grand total, according to the figures as I get them, is \$132,244,962.

Mr. HENDERSON. For the current year.

Mr. O'NEIL. Yes, and I have asked the General to correct me where I am wrong in those figures. Now, there are 30,000 pensioners that will be dropped, and allowing an average of \$63, that will leave, the way I figure, the amount to be expended for pensions \$130,354,952. Now, added to that, of course—

Mr. HENDERSON. What you are looking at is the expenditure for the current year?

Mr. O'NEIL. Yes, sir. Now, there is added to that of course the amount of money that was paid for last year's pensions out of this year's appropriation, which was about five and a half million dollars.

Mr. HENDERSON. That always laps over.

Mr. O'NEIL. And that would leave, the best way I can figure it out, a deficiency of two and a half millions at the outside.

Mr. HENDERSON (to Gen. Raum). Do you understand his statement?

Gen. RAUM. Yes, sir.

Mr. HENDERSON. What is your answer to it, if you have not answered before? I have not studied his figures and I have not got them in my mind now.

Gen. RAUM. These are the agencies which made the quarterly payments for

February: Indianapolis, Knoxville, Louisville, New York, Philadelphia, and Topeka. They required for that February payment ten and a half millions and the other agencies required \$2,279,000 to make the current payments during those three months that they were not making the quarterly payments. That was during February. How, when March came around there was another crowd of agencies, six in number that made other payments and that quarterly payment was \$9,655,141.39, while the other group of agencies paid, one of them \$1,251,830.05, and the other \$2,123,601.77. Now, the agencies, six in number, Augusta, Boston, Columbus, Ohio; Detroit, San Francisco, and Washington pay on the 4th of June. They required \$9,655,141.39 and the other agencies required \$3,375,000, and they required an aggregate of \$13,030,573.21, so that you now see exactly what the agencies are that are to pay on the 4th of June used on the 4th of March during that month, and with the other agencies during the month of March, with the money we should have on hand of \$6,722,239 to be reduced by six days' payment, three days in May and three in June, to be increased by the estimate of \$7,674,332, you will have enough to make that payment in June.

Mr. HENDERSON. Let me see if I understand your estimate of the deficiency here for this fiscal year. You have here disbursements for pension agents during February and March, 1892, \$25,811,772.82, and then you estimate an increase in the disbursements during May and June, 1892, of one million in excess of the amount paid out in February and March, which gives you an estimate of the total of the amount that you will need for May and June?

Gen. RAUM. Yes, sir.

Mr. HENDERSON. Now, I want to ask you what reason, if any, you have for believing that the payment for May and June will exceed the payment for February and March?

Gen. RAUM. Well, we have had three months' actual work in the office in the issuing of certificates which will be prorated, of course, through the various agencies, and these agencies that make these quarterly payments which are the largest, of course, will get their proportion of these new certificates.

Mr. HENDERSON. Do I understand that you think there will be an increase of the issue; that during the months of April, May, and June there is an increase of the issues of February and March?

Mr. O'NEIL. There were only 13,000 during April.

The CHAIRMAN. I understand the general to mean this, that in addition to the issues which were made during February and March he will have issues the appropriation for which were made during April and May and part of June?

Gen. RAUM. Yes, sir.

The CHAIRMAN. It is the increased pension roll he will have to provide for for the months of May and June from February and March; is not that the reason?

Gen. RAUM. That is the reason, yes, sir. I take the payments which were made in February and March by these agencies, and looking the whole field over I state now it is safe to say that those agencies will have their payments increased by a million dollars.

Mr. HENDERSON. I understand you. This \$25,000,000 is the disbursements of the agencies?

Gen. RAUM. Actually made.

Mr. HENDERSON. You have been pouring into these agencies your certificates of allowances?

Gen. RAUM. Yes, sir. Mr. O'Neil makes this point, that the payments made by these agencies of the \$25,000,000 includes the first payment of a larger number of certificates than we shall issue during those months, and that there will be a falling off in the first payments.

Mr. HENDERSON. Oh, no; because other additional certificates will increase the amount to be disbursed by the agents, of course.

The CHAIRMAN. He refers to the first payments as compared with the annual payments.

Gen. RAUM. Yes, sir. You take 10,000 cases at \$138, and of course it amounts to quite a large sum of money.

Mr. HENDERSON. How many new certificates do you think will be issued during April, May, and June, which will be distributed by the 30th of June, which will be paid upon: that is the element entering into the one million increase?

Gen. RAUM. Yes, sir.

The CHAIRMAN. That is the only reason?

Gen. RAUM. There will be a full three months' issuing of certificates because a certain lot of certificates issued in February failed to get in in time for pay-

ment in February, and there will be a certain lot of certificates issued in June that should properly be paid in June but will fail to be paid in June.

Mr. HENDERSON. I know I get letters from soldiers saying they have not got their pension certificates yet, when the notice has passed through my hands three or four weeks before, so I take it that it takes three or four weeks, and I thought I would like your opinion. After the final allowance is made out, the certificate is made out, it is transmitted to the pension agency and a voucher is made out and transmitted and received by the soldier to be filled and sent to the agency?

Gen. RAUM. Of course the difference of time will depend somewhat upon the mails, but the bundles of admitted cases are taken up in the afternoon, so as to reach the certificate division by 2 o'clock. They are then opened out and distributed, so that the next day's work will not be delayed. Now, suppose a lot of those certificates come in on the 20th from the board of review. Now, to write certificates and the preliminary papers that have been sent down to be examined and signed by the Commissioner and again sent over to the Secretary to be signed and sealed and returned, and in the meantime for the various records to be made and these papers to be gotten together again and at last mailed and sent to the agent, takes about ten days' time. Now, they are sent to the pension agent, not direct from my office to the pensioner, and the pension agent enters the man's name on the roll, makes up his voucher, and sends the voucher with the certificate to the man. If the man lives in the country he may not go to the post-office for two or three days.

Mr. HENDERSON. And he has to get that and execute it and then send it back to the pension agency?

Gen. RAUM. Yes, sir.

Mr. HENDERSON. And all this enters into the time between when the allowance is made and the cash is paid out by the disbursing officer?

Gen. RAUM. Yes, sir.

Mr. HENDERSON. That, I think, consumes from three to four weeks, according to my observation. Now, coming back to the question I put some time ago, I want to understand the elements which make up this million dollars. It seems to me as though this million dollars should be based upon the allowances that were made, say, in the month of March. The bulk of them allowed in March will not be paid until April, plus those allowed in May, because June will come in in time to be paid in the fiscal year, so there is about two months' allowance.

Gen. RAUM. No.

Mr. HENDERSON. Will part of February come in?

Gen. RAUM. Oh, yes; there will be a part of February.

Mr. HENDERSON. If part of February comes in will not part of May be left out?

Gen. RAUM. Yes, sir.

Mr. HENDERSON. Will not it amount to about two months?

Gen. RAUM. About three months.

Mr. HENDERSON. Then how many do you think will issue in the three months, running at the rate of how much a month?

Gen. RAUM. I have it here.

Mr. O'NEILL. Thirteen thousand in April.

Gen. RAUM. Originals.

Mr. HENDERSON. Of course increases would come in, too.

Gen. RAUM. They all come in, but they do not carry quite so much.

Mr. HENDERSON. What I was trying to get at was the amount paid in February and March will have to be paid again in the next quarter, less the difference between the regular payments and the first payments—

Gen. RAUM. Yes, sir.

Mr. HENDERSON. Plus the first payment on new allowances, increases, new certificates that will issue during three months, which you estimate will reach the disbursing agents in time for payment?

Gen. RAUM. Yes, sir.

Mr. HENDERSON. And that you estimate will be a million dollars, taking those elements into account?

Gen. RAUM. Yes, sir, I put that down; but of course it is an estimate, yet I think it will be about right.

Mr. HENDERSON. Is it your judgment it is an over rather than an under estimate?

Gen. RAUM. No, I think it is just about right.

Mr. HENDERSON. So after taking all these matters into consideration and analyzing it carefully, you think you will have a deficiency of \$7,674,332.04?

Gen. RAUM. Yes, sir. You see if this appropriation is made and added to the amount on hand at the close of business hours on the 26th of May plus the amount still in the Treasury, you have a fraction over \$14,000,000. Now, the actual payment for February was a fraction over \$13,000,000, so it can not miss it very much. I have done my best about it because I do not think it is desirable to appropriate more than is necessary.

Thereupon the committee adjourned.

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
Washington, May 28, 1892.

DEAR SIR: I have the honor to transmit for the information of the Committee on Appropriations a report of the eighteen pension agents of the balances on hand May 26, 1892, of public moneys available for army pensions, the amount being \$3,229,786.83. I have also to inform you that the unexpended balance in the Treasury for pensions, on the same date, was \$3,192,530.02; total amount available in the hands of pension agents and in the Treasury for pensions for the balance of this fiscal year, \$6,422,316.85.

Very respectfully,

GREEN B. RAUM,
Commissioner.

Mr. J. C. COURTS,
Clerk Committee on Appropriations, House of Representatives.

Balances of Army pensions May 27, 1892.

Agency.	Amount.	Agency.	Amount.
Augusta	\$264,426.46	Louisville	\$209,257.27
Boston	162,522.50	Milwaukee	161,500.00
Buffalo	55,527.00	New York City	259,994.55
Chicago	140,200.00	Philadelphia	64,058.00
Columbus	93,000.00	Pittsburg	19,700.00
Concord	291,843.21	San Francisco	92,918.57
Des Moines	2,540.91	Topeka	441,700.00
Detroit	144,903.54	Washington	177,839.99
Indianapolis	576,869.51		
Knoxville	70,985.32	Total	3,229,786.83

DEPARTMENT OF THE INTERIOR, BUREAU OF PENSIONS,
Washington, May 28, 1892.

DEAR SIR: By direction of the Commissioner, and in response to your request, I transmit herewith a statement showing the actual monthly expenditures for the pension service, not including the office at Washington from the 1st day of July, 1890, to the 31st day of March, 1892.

Very respectfully,

H. G. LINEAWEAVER,
Private Secretary.

Mr. J. C. COURTS,
Clerk Committee on Appropriations, House of Representatives.

Table showing pension agency expenses for each month, from July 1, 1890, to March 31, 1892.

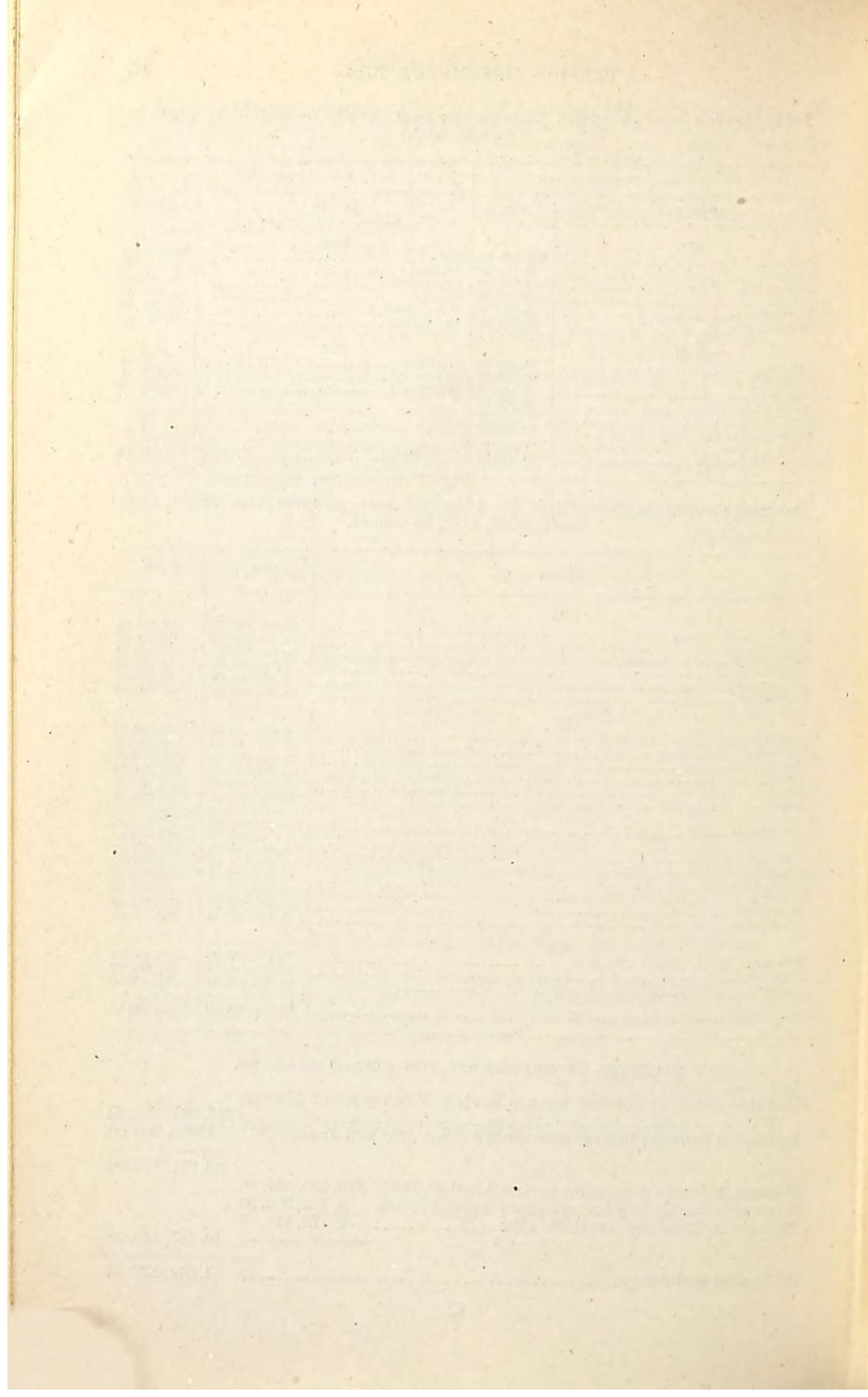
Fiscal year 1891.		Fiscal year 1892.	
Month.	Amount.	Month.	Amount.
1890.		1891.	
July.....	\$22,769.86	July.....	\$38,617.13
August.....	28,114.43	August.....	37,911.46
September.....	34,514.70	September.....	37,096.20
October.....	28,399.68	October.....	50,251.57
November.....	25,481.45	November.....	35,407.51
December.....	32,934.98	December.....	41,618.61
1891.		1892.	
January.....	24,939.55	January.....	46,135.42
February.....	27,797.73	February.....	37,626.61
March.....	37,104.17	March.....	41,902.20
April.....	30,761.88		
May.....	37,074.59		
June.....	50,467.12		
Total.....	380,360.14	Total.....	368,566.71

Statement showing the amount paid for army and navy pensions from July 1, 1890, to March 31, 1892, by months.

Month.	Army.	Navy.
1890.		
July.....	\$4,438,687.37	\$83,815.84
August.....	3,599,392.53	53,818.00
September.....	21,042,636.45	349,083.84
October.....	3,713,768.01	63,996.06
November.....	2,989,800.63	59,278.25
December.....	20,265,366.25	337,248.64
1891.		
January.....	2,873,408.93	70,547.22
February.....	2,601,621.97	46,237.28
March.....	21,638,087.64	400,589.51
April.....	3,588,816.24	123,971.49
May.....	2,957,302.46	81,436.85
June.....	24,928,897.77	551,894.18
Total.....	114,637,786.25	2,221,917.16
1892.		
July.....	6,483,359.52	147,298.87
August.....	9,037,389.12	194,675.17
September.....	10,618,692.65	309,329.89
October.....	11,690,317.16	198,095.69
November.....	12,261,503.29	249,577.39
December.....	11,515,297.64	360,136.69
January.....	10,791,205.07	206,956.95
February.....	12,781,199.61	257,679.93
March.....	13,034,000.54	384,083.55
Total.....	98,212,964.60	2,307,834.13

ESTIMATE OF DEFICIENCY FOR FISCAL YEAR 1892.

Disbursements by pension agents during February and March, 1892.....	\$25,811,772.82
Estimated increase in disbursements during May and June, 1892.....	1,000,000.00
	26,811,772.82
Balance in hands of pension agents April 30, 1892.....	\$10,689,566.16
Amount in transit to pension agents April 30, 1892.....	4,725,000.00
Balance in Treasury April 30, 1892.....	3,722,874.62
	19,137,440.78
Estimated deficiency.....	7,674,332.04



JOHN W. LEWIS.

JUNE 4, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 1106.]

The Committee on Claims, to whom was referred the bill (S. 1106) for the relief of John W. Lewis, of Oregon, make the following report:

John W. Lewis was appointed register of the Land Office at The Dalles, Oregon, and qualified and entered upon the discharge of the duties of the office April 17, 1890. Thomas W. Slusher, receiver of the land office in that land district, died April 3, 1890, and his successor was not appointed and qualified until July 7, 1890. As no business for which fees could be received could be transacted while there was a vacancy in the office of receiver, there was no money received at the land office from April 17 to July 7, 1890. The salary of register is \$500 per annum and an allowance from fees and commissions earned to make the maximum compensation \$3,000 per annum.

The amount of fees and commissions earned at The Dalles office for the years 1889, 1890, and 1891 entitled the register and receiver at The Dalles to the maximum compensation from April 17 to July 7, 1890. Mr. Lewis kept the land office open and was constantly employed in the transaction of such business as could be transacted without the presence of a receiver. During that period a large number of applications to purchase lands, accompanied by cash deposits, were made, a list of which are hereto attached, marked A. The character of these services is thus stated by Mr. Lewis in a letter addressed to the honorable Commissioner of the General Land Office dated September 22, 1891:

During the interval between April 3 and July 7, 1890, when there was no receiver, there were presented at this office, in person or by mail, between three and four hundred communications containing money, bank checks, postal money orders, and postal notes to the amount of over \$10,000, for all of which I was responsible.

Included in these were the following applications to enter: T. C., 47; Hds., 50; under D. S. act, 3; Timber and Stone, 2; Preëmp. D. S., 77; and the following proofs were offered: T. C., 10; Preëmp., 48; and Hd., 61.

Many of these applications to enter were made in person, and many of the proofs offered had been advertised to be made before register and receiver on dates from April 3 to July 7. The affidavits in such applications were sworn to before the register, as was the testimony in the cases presented for final proof on the dates when presented. This can hardly be classed as simply "clerical."

As a matter of justice to claimants a list of all papers was made giving name, date, and amount of money inclosed, and the papers were deposited in the vault of one of the national banks in this city. This was done to prevent the numerous contests it was feared might ensue on questions of prior right of entry had these papers been returned to claimants till such time as a receiver should have been appointed, and to prevent the necessity of claimants having to republish had not their testimony been taken on the day set.

When the present receiver, Col. T. S. Lang, receipted July 7, 1890, this list was taken up and applications and proofs acted on in the order in which they had been presented and were disposed of as fast as possible, and the amount of fees and commissions to register and receiver were, in consequence of this delayed work, swelled in the following (third) quarter to \$2,141.67, and for the fourth quarter to \$2,761.12, all of which, over \$1,500 for each quarter, was retained by the honorable Commissioner as by law directed.

During the four months of April, May, June, and July the register had no assistance save one clerk, and is as deservedly entitled to full pay for the part of quarter ending June 30, 1890, as for any other quarter, having practically done the work of both officers during that time.

It was held by the Commissioner of the General Land Office that Mr. Lewis was entitled only to his salary for the period because no fees or commissions were earned during the vacancy in the office of receiver. If there had been a receiver during the period both the register and receiver would have been entitled for the entire year to a salary of \$3,000. The work performed by the register during the said period advanced the business of the office and helped to swell the aggregate of fees and commissions for the year. In a letter from the honorable Commissioner of the General Land Office to the present chairman of this committee, which is hereto attached, he says in regard to this claim:

There is no doubt that Mr. Lewis as register performed a large amount of work during the period from April 17 to June 30, 1890, in receiving and filing entries, etc., pending the appointment of a receiver, and for which he has been inadequately compensated, but this office could only allow him what the law and the reviewing officers, the honorable First Comptroller of the Treasury, interpretation of the law decided that he was legally entitled to.

Your committee recommend that the bill do pass, and that House bill 1438 for the same purpose lie upon the table.

"A."

List of applications suspended to await joint action of register and receiver from April 14 to July 7, 1890.

Date.	Name.	Deposit.	Application.	Amount.
Apr. 14	Geo. N. Mannay .....	.....	T. C. app.....	\$14.00
16	Frank Forrest .....	.....	T. C. app.....	14.00
17	— Cunningham .....	.....	T. C. app.....	14.00
18	M. F. Porter .....	.....	D. S.	3.00
18	R. C. Swaggart .....	.....	T. C.	14.00
18	Andrew Anderson .....	.....	D. S.	3.00
19	Donald McRae .....	.....	T. C.	No money
21	Jno. V. O'Leary .....	.....	D. S.	3.00
21	W. J. Harragh .....	.....	Hd.	16.00
21	N. Donnolly .....	.....	Hd. proof.....	33.33
21	G. W. Stewart .....	.....		
21	H. C. Paulsen .....	.....	Hd.	16.00
22	Robt. L. Kilbourn .....	.....	D. S.	3.00
22	Calvin M. Smith .....	.....	D. S.	3.00
22	William Tonnoh .....	.....	T. C.	14.00
23	Julia Lyman .....	.....	T. C.	15.00
23	And. M. Petterson .....	.....	Hd.	18.15
23	Chas. P. Johnson .....	.....	Preëmp. proof.....	200.00
23	Uriah P. Ridgway .....	.....	Preëmp. proof.....	200.00

List of applications suspended to await joint action of register and receiver from April 14 to July 7, 1890—Continued.

Date.	Name.	Deposit.	Application.	Amount.
Apr. 23	Geo. M. Simpson		Pub. notice	\$7.00
23	R. W. Jones		Pub. notice	7.00
	Maguire		\$7.00	28.00
	Anderson		7.00	
23	Tobey		7.00	
	Jackson		6.00	
	(Contest)		1.00	
23	Briars		7.00	8.00
	Duncan McRae		8.00	
24	Mary C. Shaw		D. S.	3.00
25	Amory S. Collins	Chk	Contest	29.00
25	C. B. Allen			
26	Oscar C. Maxwell		D. S.	3.00
26	James Collins		Publication	7.00
26	Edw. F. Horn	Ck	T. C.	14.00
26	Riley M. Horn	Ck	T. C.	14.00
26	John W. Brown	Ck	T. C.	14.00
26	Frank Cramer	Ck	Hd.	16.00
26	Joseph Whyte	Ck	Publication	7.00
26	Avery G. Scoggin	Ck	D. S.	3.00
26	Eliza B. Backus		Hd. appn	16.00
26	Maria Spear		Hd. appn	16.00
28	John Pradeu	P. O.	Hd. appn	16.00
28	George Moore		D. S.	3.00
29	John E. Moore	Ck	Preëmp. proof	200.00
29	Adam P. Barnett	P. O.	D. S.	3.00
29	J. M. Piper, Warfield McNab		Hd. proof	25.82
29	Geo. Phillips, W. P. French		Hd. Proof	16.95
29	Jos. O. Warmoth	Ck	Preëmp proof	200.00
29	Peter Conroy & Mary A. Fairchild		Con. proof	10.00
29	Jos. Shields	Ck	Not. of proof	7.00
30	John W. Roach	Ck	D. S.	3.00
30	J. M. Chapman		D. S.	3.00
30	Malinda Hymer	P. O.	Hd. app	16.00
30	Daniel B. Leathers	P. O.	Hd. app	16.00
30	Henry Howell	P. O.	D. S.	3.00
30	Frank Sankey	Ck	T. C.	14.00
30	Orace G. Collyer	P. O.	Hd. app	16.00
30	Jno. W. Montgomery	P. N.	D. S.	3.00
30	T. C. Neece		Fl. hd	No money
30	Jas. Linton	Cash	Hd. apl	16.00
30	Jos. Turner	Cash	Hd. apl	16.00
May 1	Luther Houston	P. O.	T. C.	14.00
1	J. W. Redford	P. O.	Final T. C.	4.00
1	T. J. Powell	P. O.	Final hd	7.50
1	Loren J. Fale	P. O.	D. S.	3.00
2	Linfon C. Keethley		Pub. notices	7.00
2	John F. Spray		Pub. notices	7.00
2	W. J. Emmett		Pub. notices	7.00
2	Mary Jane Brookhouse		D. S.	3.00
2	Henry B. Deerhake	P. O.	Hd. ap	16.00
3	Howard C. Dodson	Ck	D. S.	3.00
3	Wm. Reininger	P. O.	D. S.	3.00
3	W. G. Childers		Proof	7.50
3	Zachariah J. Marten	Ck	D. S.	3.00
3	Charles T. Scroggin	Ck	T. C.	14.00
5	Geo. J. Dyer		Proof fees	14.00
5	Henry E. Steed		Proof fees	14.00
5	Peter D. Borg		Proof fees T. C.	4.00
5	Manon W. Osborn		Hd. app	16.00
6	Frank Sankey		Hd. app	16.00
6	Rod'k N. Donnelly		Hd. app	16.00
5	Jeddy Brown		D. S.	3.00
6	Thos. J. Davidson		D. S.	3.00
6	Creighton Keeney		Hd. app	16.00
7	Geo. M. Holmes		Hd. app	16.00
7	James H. Wyland	P. O.	Hd. proof	8.73
8	J. W. Conger	Chk	Pre. proof	200.00
8	Schmidt & Powell	Chk	T. C. entries	28.00
9	J. S. Turner	Chk	Hd. proof	8.25
9	J. W. Pigg	Chk	Hd. proof	8.50
9	A. G. Matthews	Chk	Hd. proof	8.50
9	W. J. Edwards	Chk	Hd. proof	8.50
9	C. J. Quinn	Chk	Hd. proof	8.70
9	Wm. Wehrlir	Chk	Hd. proof	8.20
9	Wm. Nortridge	Chk	Hd. proof	8.25
9	Laura E. McConnell	Chk	Hd. proof	8.25
9	J. H. Nelson	Chk	Pre. proof	200.00
9	Richard Nelson	Chk	Pre. proof	200.00
9	Rufus Ring	Chk	Pre. proof	100.00
9	Louis P. Davidson	Chk	Pre. proof	200.00

List of applications suspended to await joint action of register and receiver from April 14 to July 7, 1890—Continued.

Date.	Name.	Deposit.	Application.	Amount.
May 9	Jos. Kleoker	Chk	Pre. proof	\$200.00
9	E. B. Smith	Chk	Hd. app	15.00
9	J. G. King	Chk	Hd. app	16.00
9	Ed. Dunn	Chk	Hd. app	16.00
9	Wm. M. Anderson	Chk	Con. notices	17.00
9	Julia Paul			
9	Lucian Paul			
9	F. D. Cornett	Chk	Proof notice	7.00
9	J. K. Frazer	Chk	Proof notice	7.00
9	D. B. Thomas	Chk	Pre. proof	200.00
9	Hugh M. Corten	C. D	Pre. proof	200.00
9	Hiriam Smith	P. O	D. S	3.00
9	Albert Munger	P. O	D. S	3.00
9	John F. Cunningham	Coin	T. C. app	10.00
10	Jas. S. Smith	P. O	D. S	3.00
10	Frank M. Farris	Ck	Pub. fee	7.00
10	Warren Wells	Cash	Hd. app	16.00
12	— Schwartz	Cash	Pub. proof	7.00
12	— Roberts	Cash	Pub. proof	7.00
12	L. L. Minton	Cash	Pub. proof	7.00
12	Henry Sparling	Cash	Hd. app	16.00
13	Trent Wilson Johnson	Ck. & cash	Hd. app. and D. S	22.50
13	C. C. Massiker	P. O	D. S. proof	200.00
13	Wm. G. Keys	Ck	D. S. proof	200.00
13	Jno. Marck	Ck	D. S. proof	200.00
14	Martin Reeder	Ck	Pub. notice	7.50
14	John Bruse	P. O	Hd. app	16.00
14	Jacob H. Williams	P. O	T. C. app	14.00
14	Grant White	C. D	D. S. proof	200.00
14	Jennie D. Miller	Ck	Hd. app	16.00
15	Jno. B. Butler	Cash	Hd. app	16.00
15	Benton Kelsey	Cash	Hd. app	16.00
16	D. W. Bailey	C. D	Desert app	97.93
16	Wm. B. Childers	Ck	D. S. proof	200.00
16	Jno. M. Murray	Cash	Hd. app	16.00
16	Jas. E. Keys	Cash	T. C. app	14.00
17	Geo. Tatom	Ck	D. S. proof	200.00
17	Chester Cornwell	Post. note	Pub. notice	7.00
17	Oryer S. Smart	P. O	D. S. notice	3.00
19	Jno. Richman	Ck	T. C	14.00
19	Henry Scherznig	P. O	Hd. proof	16.67
19	Theo. E. Wood .....	.....	Hd. proof	16.67
19	Chas. B. Mealey	P. O	Hd. app	16.00
20	Jno. M. Dollarhide	P. O	D. S	3.00
20	Allen Crabtree	Ck	Hd. app. and T. C	30.00
21	Isaac Blaun	Cash	D. S. app	3.00
21	Davis Meeker	Ck	D. S. proof	190.00
21	Henry P. Fuslong	P. O	D. S	3.00
21	S. P. Wilson	Ck	Hd. proof	8.35
21	Geo. W. Hall	Ck	D. S. proof	200.00
22	Ezra A. May	Ck	Hd. proof	8.25
22	J. H. Menefee	Cash	Hd. proof, re-pub	5.00
23	Jas. Payne	P. O	D. S	7.50
24	Milton Damon	Ck	Hd. proof	8.64
24	David C. Baker	Ck	Hd. app	16.00
26	Daniel H. Roberts	Cash	T. C. app	14.00
26	Robert Jones	Cash	Pub. notice	7.00
26	Jno. C. Markley	P. O	D. S. app	3.00
26	Thos. J. Leach	Ck	T. C. app	14.00
26	Gertrude E. Sayer	Ck	T. C. app	14.00
26	Geo. Hardie	P. O	D. S. app	3.00
26	Geo. M. Wasson	Cash	T. C. app	15.00
26	Joseph L. Glaze	Ck	D. S. proof	217.00
26	Cornelius Poin Kindson		D. S. app	
26	Jno. E. Campbell		T. C. app	
27	Newton Woodcock	Cash	D. S	3.00
27	Geo. W. Marvel	Ck	Hd. app	16.00
27	Mrs. Jerusha Shadduck	Ck	D. S. proof	200.00
28	Laudren E. Beatty	Cash	D. S	3.00
28	Andrew Carlson	P. O	Hd. pub	7.00
28	M. Busie	Cash	D. S. pub	6.00
29	Jno. C. Campbell	Cash	D. S	3.00
31	R. J. Fisher	Cash	T. C. app	9.00
31	Alex. L. Cornett	P. O	T. C. app	14.00
31	Henry G. Thurston	Cash	D. S	3.00
June 3	Joseph Harvey	P. O	T. C	4.00
3	Leroy L. Shelley	Ck	H. D. com	16.00
4	Isaac M. Davis	Cash	Pub. notice	6.00
5	Enoch Cave	Ck	Com. hd	200.00
6	Edward Washburn	Cash	H. D. app	16.00
6	Jules Edwards	P. O	H. D. app	16.00

List of applications suspended to await joint action of register and receiver from April 14 to July 7, 1890—Continued.

Date.	Name.	Deposit.	Application.	Amount.
June 6	E. C. Fell		T. C. proof	\$ 4.00
6	Thomas J. Moffitt	Ck	Hd. proof	8.40
6	John A. Scott		Hd. app	16.00
6	Edw. Washburn	Ck	Pre. proof	209.11
6	Freeman N. Fryer	Ck	Com. hd. proof	201.89
6	John A. Scott	Ck	Pre hd	190.46
6	do		T. C. cont	5.00
7	Alfred Florey	Ck	Pre proof	201.56
7	J. B. Manley		Hd. app	16.00
9	Stephen B. Conture	P. O	D. S	3.00
9	Eugene Hulse	P. O	T. C	14.00
9	Geo. Gibbons, for Wm. Gibbons			
9	Sam McGiloney			
9	Wm. H. Francis		Hd. proofs	40.27
9	Will Davenport			
9	Silas Quigley			
9	Geo. Woodruff		T. C. app	14.00
9	J. C. Hayes		D. S	3.00
9	T. P. Rice		D. S	3.00
9	Ella Hall		D. S	3.00
9	Peter Nesson		D. S	3.00
10	Alex. Young	Cash and P. N.	Pub. notice	7.00
10	Robt. Cates		T. C. app	14.70
10	Geo. W. Hall		D. S	3.00
10	Mary J. Griffin		D. S	3.00
10	Ira Brown		Hd. app	16.00
11	G. W. Rineheart		T. C. app	15.00
11	J. G. Dunn		D. S	3.00
11	Thos. Morgan		T. C	14.00
11	Wm. Fry	P. O	Hd. proof	9.00
11	A. E. Lawyer	Ck	D. S. proof	200.00
11	Jno. V. Marten	Ck	D. S. proof	200.00
11	Oliver J. Cox			
11	A. T. King		T. C. and hd	12.50
12	Lafayette Lewis		Hd. app	16.00
12	D. A. Porter	P. O	Hd. proof	8.50
12	Frank V. Ireland			
12	A. S. Perham	Ck	Hd. proof	388.26
13	E. Pedigo		D. S	3.00
13	Elizabeth Mealey	Ck	Hd. app	16.00
13	Grant R. Ashby		D. S	3.00
13	Joseph B. Ashby		T. C	14.00
14	Jas. H. Ingraham	P. O	D. S	3.00
14	Emeline McWilliams	P. O	D. S	3.00
16	Paul Carterig		D. S	3.00
16	W. C. Rutledge	Ck	Pub. fee	7.00
16	Jno. B. Fryrear	P. O	Hd. proof	7.75
16	G. W. Stone		D. S. app	3.00
16	Wm. H. Rose		T. C. app	14.00
17	F. D. V. Shrum		Hd app	16.00
17	Louis M. Woodside		D. S	3.00
17	Max Looney		D. S	3.00
17	A. J. Shrum		Pub. notice	7.50
17	E. Looney		Pub. notice	7.50
17	C. W. Fairchild		T. C. app	9.00
17	Jas. K. McClure		D. S	3.00
17	A. H. Hooker			
17	M. Swearingen		Hd. proof	16.90
17	John A. McMorris		Hd. app	16.00
17	Thos. L. Buckley	Ck	D. S. proof	200.00
17	Howard S. Tobey	Ck	D. S. proof	201.77
17	John L. Burris		T. C. proof	4.00
17	Ebenezer Cook		T. C proof	4.00
17	Maud C. Gilman		Tree land	10.00
17	C. Raymond Davis		Tree land	10.00
18	John Ryan		Hd. proof	7.00
18	Larkin Lamb		Hd. proof	7.03
18	Godfried Geinther		Hd. proof	7.50
18	Alex. McCoy		Pre. proof	200.00
19	L. F. Castle	Ck	Com. Hd. proof	200.00
20	John Anderson		Com. Hd. proof	201.00
21	J. W. Waterman	Cash Ex-cess $\frac{20}{100}$	Fin. pr	80.25
23	Duncan McRea		D. S. proof	203.00
24	Edgar S. Barnes		T. C. app	14.00
24	John Berthold		Pub. notice	7.50
24	Harvey Blake		Hd. proof	8.40
24	Nye Rambo			
24	Clarence Platts		Hd. proof	17.02
24	Thos. Stewart		Hd. app	16.00
25	J. M. Fisher		T. C. proof	4.00

List of applications suspended to await joint action of register and receiver from April 14 to July 7, 1890—Continued.

Date.	Name.	Deposit.	Application.	Amount.
June 25	Warner A. Wren	Cash	Cash proof	\$200.00
25	Naomi Bamis		D. S.	3.00
25	M. T. Manning		T. C. app	14.00
26	John R. Frazer	Ck	Hd. proofs	13.00
26	Frank D. Cornett			
26	Helen Russell	P. O	Hd. proofs	17.00
26	John S. Brian			
26	John Brown	Ck	Cash proofs	199.62
26	William Gilliam	Ck	Cash proofs	200.00
26	George Hansen	P. O	Hd. app	16.00
26	Thos. Freeman	P. O	Hd. proof	6.90
26	Richard Hickson	Ck	Cash proof	192.00
26	Leslie Powell		Hd. proof	7.50
26	Abram C. Huff		T. C. entry	14.00
26	Basil Delore		Contest notice	10.00
26	Thos. B. Mark		Pub. notice	7.00
27	August Beckman	P. O	D. S.	3.00
27	Anderson Mott	Cash	D. S.	3.00
27	Richard H. Armsworthy	Ck. & cash	Cash proof	202.50
27	T. J. Sullivan	Cash	T. C. entry	14.00
28	Elge. M. Stevens	P. N	D. S.	3.00
30	Benj. T. Snell	Ck	Pub. notice	7.00
30	W. H. & Richd. Steinbach	Ck	T. C. entries	28.00
30	Thomas L. Bledsoe	Ck	Hd. app	16.00
July 1	Henry C. Turner	Ck	Pub. notice	7.00
1	Mrs. Anderson	Ck	Hd. proof	21.75
	J. S. & L. W. Paul			
1	Robert E. Campbell		D. S.	3.00
1	Edward Smith		D. S.	3.00
1	James Tolbert		Hd. app	16.00
1	John R. Fisher		D. S.	3.00
2	Patrick Kelly		Deposit	10.00
2	James Connolly		Des't Ld. app	8.75
2	Frank Shiffer		Hd. proof	8.45
2	Richard S. Snyder	P. O	Cash proof	200.00
2	Leslie Powell	P. O	Cash proof	150.00
3	John F. Hawk	P. O	D. S.	3.00
3	Carrie J. Pullen	P. O	D. S.	3.00
5	Robert P. Johnson	P. O	Hd. proof	7.60
5	Samuel G. Gerking	P. O	T. C. proof	4.00
5	Benj. C. Beaman		Hd. proof	7.50
5	T. J. Fryrear		D. S.	3.00
5	James Levely		Hd. proof	7.60
5	John J. Smith		Hd. proof	7.50
5	Wm. Retter		T. C. app	14.00
7	Sallie C. Hodges	P. O	Hd. proof	7.00
7	F. C. Lacelle	P. N	D. S.	3.00
7	R. H. Volrath		Hd. proof	7.50
7	Geo. S. Pershin	Cash	T. C. app	14.00
8	Mary A. Galbraith	Cash	D. S.	3.00
8	Joseph Whyte	Ck	H. D. proof	7.25
9	Caleb M. Busey	Cash	D. S.	5.00
9	John B. Stephens	P. O	T. C.	14.00
10	Mrs. A. Wright	P. O	D. S.	3.00
10	L. E. Donegan	P. O	D. S.	3.00
10	Peter Conroy	Ck	D. S. proof	200.00
10	M. A. Fairchild	Ck	D. S. proof	200.00
10	James Collins	Ck	D. S. proof	200.00
10	Sereno Williams	Cash	D. S.	3.00
10	Ziba Dimmick		D. S.	3.00
10	Milo Wood		Pub. notice	7.50
10	Thos. L. Stewart	Ck	Hd. app	16.00
10	J. H. Wilson		Hd. app	16.00
12	John E. Belshaw		D. S.	3.00
14	J. C. Hassler	Ck	Hd. app	21.95
14	J. C. Hanber	Ck	D. S. app	24.10
16	Andrew Carlson	Ck	Hd. app. proof	16.70
16	Hiram Tash	Ck	Hd. app. proof	
16	J. J. Donahoo	P. O	D. S.	3.00
16	C. S. Wright	Ck	Hd. app	16.00
16	George Angell	Cash	D. S.	3.00
16	George W. Denham	Cash	D. S.	3.00
16	James Payne	Cash	Hd. app	16.00
16	James Foley	Cash	D. S.	3.00
17	M. Murray	Cash	Hd. app	16.00
17	Thos. Y. Sumner	P. O	D. S.	3.00
17	M. Murry	Cash	Hd. appn	16.00
17	Thos. Y. Sumner	P. O	D. S.	3.00
21	Y. H. Bisbee	P. O	T. C. proof	4.00
22	Lawrence B. Coolby	P. O	D. S.	3.00
30	James Harvey	Ck	Hd. proof	7.25

List of applications suspended to await joint action of register and receiver from April 14 to July 7, 1890—Continued.

Date.	Name.	Deposit.	Application.	Amount.
July 31	Jerry Archer	P. O	T. C. app	\$14.00
Aug. 1	Mrs. Fredenburg	Cash	D. S.	3.00
1	J. T. Lasley	P. O	T. C. entry	14.03
1	Jas. S. Breeding	P. O	Hd. proof	14.10
30	John B. Butler .....	.....	Pre. proof	203.00
30	C. D. Albaugh	Ck	D. S.	3.00
30	R. H. Norton	Ck	Hd. app	16.00
30	J. Y. Moreland	Ck	T. C.	16.00
30	Ray Knight	P. N	D. S.	3.00
30	Geo. Aldredge	P. N	D. S.	3.00
30	P. L. Frasier	Ck	D. S.	3.00
30	Benj. N. Parker	P. O	Hd. app	16.00
30	Dillon Hoskins	Ck	Pre. proof	200.00

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., September 30, 1891.

SIR: In reply to your verbal communication relative to the compensation allowed Mr. John W. Lewis, register of the local land office at The Dalles, Oregon, for fractional quarter commencing April 17 and ending June 30, 1890, fiscal year 1890, I would state that Mr. Lewis was allowed the full compensation to which he was entitled under the law, which was salary at the rate of \$500 per annum (see section 2237, Revised Statutes, p. 392), amounting to \$103.03, according to Government salary table.

Under section 2243, p. 393, Revised Statutes, "the compensation of registers and receivers, both for salary and commissions, shall commence and be calculated from the time they respectively enter on the discharge of their duties."

From April 17 to June 30, 1890, there being no receiver of public moneys appointed by the President and qualified to succeed the late receiver, Mr. Thomas W. Slusher, who died April 3, 1890, the office was practically closed for business, as no business except clerical can be transacted without the joint action of both register and receiver; therefore there was no money received from cash sales or fees and commissions. See decision case of *Graham vs. Carpenter* (copy inclosed).

On the 7th of July, 1890, fiscal year 1891, Mr. Thomas S. Lang qualified and became receiver from that date, and no moneys had been received either for cash sales or fees and commissions from the date of Mr. Slusher's death, April 3, 1890, fiscal year 1890, until his successor duly qualified, July 7, 1890, fiscal year 1891.

Sections 2238, 2239, and 2240, Revised Statutes, pp. 392 and 393, prescribes the fees and commissions to which the registers and receivers are legally entitled in addition to salary, and as no moneys had been received until July 7, 1890, fiscal year 1891, there were no fees and commissions to which Mr. Lewis was entitled that could be applied to fractional quarter ended June 30, 1890.

Under decision of honorable First Comptroller of the Treasury (copy inclosed) section 2240, Revised Statutes, is decided to mean fiscal year and not calendar year; therefore any excess of maximum compensation earned in any one quarter of a fiscal year could only be applied to a deficiency of maximum compensation of any quarter of the same fiscal year.

Mr. Lewis's great error is in confounding the earnings of one fiscal year and making them apply to a deficiency in another fiscal year.

There is no doubt that Mr. Lewis as register performed a large amount of work during the period from April 17 to June 30, 1890, in receiving and filing entries, etc., pending the appointment of a receiver, and for which he has been inadequately compensated; but this office could only allow him what the law and the reviewing officer's, the honorable First Comptroller of the Treasury, interpretation of the law decided that he was legally entitled to.

The letter of Mr. John W. Lewis is herewith returned.

Very respectfully,

THOS. H. CARTER,
Commissioner.

Hon. JOSEPH N. DOLPH,
United States Senate.

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE,
Washington, D. C., January 20, 1886.

SIR: In reply to your communication of the 8th instant, in reference to the account of E. G. Swanstrom, late receiver at Duluth, Minn., for the quarter ending June 30, 1884, and your request for the decision of this office upon certain questions raised therein, I have the honor to inform you as follows:

"First. Do the fees prescribed by section 2238, Revised Statutes, attach to the office or to the officer?"

The maximum compensation allowed to each register and receiver by section 2240 is \$3,000 a year, and for any one-quarter or fractional quarter a pro rata allowance of such maximum. Section 2241 directs that whenever the compensation exceeds the maximum the excess shall be paid into the Treasury as other public moneys. This indicates plainly that the "fees" do not attach to the officer, and it is believed that these two sections are too clear to permit of any other construction than that the fees and commissions attach to the office.

"Second. Is a register or receiver entitled to any of the fees received in the office during any part of the term of his predecessor or successor?"

Clearly he is not. There would be no reason or justice in allowing a register or receiver, as the case may be, compensation for the burdens and services performed by another, nor in allowing him the benefits or emoluments of a public office for any period longer than which he is the official head and performs the functions of the office. Furthermore this could not be done without a direct violation of section 2243, Revised Statutes, act 24 February, 1855. There is, however, a special act allowing this to be done in the case of the accounts coming under the Internal Revenue Bureau. (See section 3147, Revised Statutes, act 30 June, 1864.)

"Third. Does the term 'year,' referred to in section 2240, Revised Statutes, mean a calendar or a fiscal year?"

It is held by this office to mean a "fiscal year." Section 237, Revised Statutes, act 26 August, 1842, states that in all matters of accounts, receipts, expenditures, etc., the fiscal year of the Treasury shall commence on the 1st day of July in each year, etc. Section 250, Revised Statutes, refers to the fiscal year, and provides when all accounts for the expenditure of public moneys shall be settled, etc. Reference is also made to section 3146, Revised Statutes. There is a clear implication that wherever the term "year" is used, alone and unqualified in the Revised Statutes, that it is understood and intended to imply a "fiscal year," and "what is implied in a statute, pleading, contract, or will, is as much a part of it as what is expressed" (2 Paine's Rep., 2, 251) *Koning vs. Bayard*; (10 Wend., 218) *Rogers vs. Kneland*.

But I do not place my decision upon this ground alone. I am of the opinion that the point in question is settled most forcibly and conclusively by light of the custom which Congress has in making appropriations by the "fiscal year"; hence the phrase "fiscal year" is but a fair and reasonable interpretation of the term "year" in section 2240, Revised Statutes, and it is self-evident that this was the intention of Congress. A "thing within the intention of the makers of the statute is as much within the statute as if it were within the letter." (3 How. 565, *United States vs. Freeman*.)

Your ruling in the settlement of the account referred to agrees with the decision of this office, and is accordingly affirmed. The papers accompanying your letter are herewith returned.

Very respectfully,

M. J. DURHAM,
Comptroller.

Hon. WM. A. J. SPARKS,
Commissioner General Land Office, Department of the Interior.

FRANK ROTHER.

JUNE 4, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 390.]

The Committee on Claims, to whom was referred the bill (S. 390) authorizing and directing the Secretary of the Treasury to pay to Frank Rother \$225 due him for services as route agent, have examined the same and report:

Frank Rother was an employé of the Government in its Post-Office Department between June 20, 1876, and September 20, 1876; compensation for services to be rendered by him had been fixed at \$900 per annum; he received no pay for the services rendered between said June 20, 1876, and September 20, 1876, and he is entitled to have his salary paid him for that period.

Your committee annex the petition of the claimant and other proof filed before us.

The bill is reported back favorably with the recommendation that it do pass.

Petition.

I would most respectfully represent that on or about the 6th day of June, A. D. 1876, I was appointed route agent on the Eureka and Palisade Railroad, in Nevada, which appointment I received in person at Washington, D. C. I immediately started from Washington, D. C., to Palisade, Nev., and there started upon the discharge of my duties, and was duly paid one-half month's salary by the postmaster at Eureka, Nev. Owing to some misunderstanding existing between the Government and the Eureka and Palisade Railroad Company, said company refused the establishment of service on their line, and hence I was detailed to duty on the San Francisco and Tomales Railroad, and subsequently on the Central and Union Pacific Railroad.

September 20, I was transferred and designated local agent at Ogden, Utah. There is still due me three months' salary, at \$75 per month, from the Government, of which amount I have never received any part or share. I would call attention to the fact that, although I have repeatedly tried to secure my pay, I have so far failed for the following reasons, to wit:

The Post-Office Department repeatedly signified that the appropriation was exhausted, and required special acts of Congress for my relief. I will state that I was not engaged in any vocation other than that stated between the 6th day of June, A. D. 1876, and the 20th day of September, A. D. 1876, and that there is justly due me three months' salary from the 20th day of June, A. D. 1876, to the 20th day of September, the date of my transfer; wherefore I pray that Congress take such action as will enable me to get the amount so justly due me, to wit, three months' salary at \$75 per month.

Very respectfully, your obedient servant,

FRANK ROTHER.

STATE OF NEW YORK, *City and County of New York, ss:*

On this 4th day of December, A. D. 1884, personally appeared before me, the undersigned, a notary public in and for the county and city of New York, Frank Rother, who, upon being duly sworn according to law, declares that he is a claimant for \$225 for three months' service rendered the Government of the United States; and for the proper prosecution of said claim he hereby appoints Mr. Edward Perls, of 69 St. Mark's place, New York City, his true and lawful attorney in fact, with power of revocation and substitution.

Witness:

FRANK ROTHER.

In witness whereof I have hereunto set my hand and seal the day and date first above written.

[SEAL.]

HENRY BISCHOFF, Jr.,
Notary Public, New York Co. (39).

EXHIBIT A.

OFFICE OF SUPERINTENDENT RAILWAY MAIL SERVICE, EIGHTH DIVISION,
San Francisco, Cal., June 19, 1876.

SIR: I have just heard a rumor that the E. and P. R. R. Co. will not let you run over their road until they get their differences with the Department fixed up. If so, report yourself here and await further orders.

Very respectfully,

FRANK ROTHER, Esq.

J. C. COOLIDGE,
C. H. D., R. M. S., 8th Div.

EXHIBIT B.

POST-OFFICE DEPARTMENT, APPOINTMENT OFFICE,
Washington, D. C., Sept. 20, 1876.

SIR: The Postmaster-General has transferred you from the route between Palisade and Eureka, Nev., and designated you local agent at Ogden, Utah, with pay at the rate of \$900 per annum, vice H. H. Bellows, removed.

Very respectfully, etc.,

FRANK ROTHER, Esq.
Eureka, Nev.

JAMES H. MARR,
Acting 1st Ass't P. M. General.

OFFICE OF THE POSTMASTER-GENERAL,
Washington, D. C., May 1, 1890.

SIR: Replying to your letter of April 22d, and returning herewith a bill introduced in Congress authorizing and directing the Secretary of the Treasury to pay to Frank Rother \$225 due him for services as route agent, I would state that the records of the Department disclose the following:

Mr. Rother was appointed a route agent between Palisade and Eureka, Nev., June 6, 1876, compensation to be at the rate of \$900 per annum. He was transferred to the position of local agent at Ogden, Utah, September 20, 1876.

The records of the Auditor's Office show that he was paid by the postmaster at Eureka, Nev., \$42.03 for services from the 14th day of June, 1876, to the 30th day of June, 1876, inclusive.

There is no evidence that he drew pay during the third quarter of 1876, comprising the months of July, August, and September, the accounts of the postmaster at Eureka for that period being marked "delinquent."

He was paid \$225 for the fourth quarter of 1876, comprising the months of October, November, and December; and \$225 for the first quarter of 1877. The records of the Department indicate that Mr. Rother drew no pay during the third quarter of 1876.

Permit me to call your attention to the following discrepancies in the bill:

The route upon which Mr. Rother was employed was from Palisade and Eureka, not "Ureka." From July 20 to September 20 is but two months, not three, as stated in the bill.

Very respectfully,

JNO. WANAMAKER,
Postmaster-General.

Hon. E. J. DUNPHY,
House of Representatives, Washington, D. C.

BENJAMIN F. GULIC.

JUNE 4, 1892.—Laid on the table and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

ADVERSE REPORT:

[To accompany H. R. 8256.]

The Committee on Claims, to whom was referred the bill (H. R. 8256) for the relief of Benjamin F. Gulic, respectfully report that they have carefully considered the same, and learn that the Court of Claims is open to the said Benjamin F. Gulic, and that he can maintain his rights in said court without any act of Congress.

Your committee is of the opinion that Congressional aid should never be extended to anyone where there is no impediment to a trial of their rights in courts constituted for that purpose. There is no statutory bar and no reason given your committee why they should take action in this matter.

Your committee recommend that the bill lie upon the table.

○

WIDOW OF PATRICK P. BURTON.

JUNE 4, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 5650.]

The Committee on Claims, to whom was referred the bill (H. R. 5650) for the relief of the widow of Patrick P. Burton, have carefully considered the same and report it back to the House with the recommendation that it do pass.

Your committee append to this report a letter dated August 13, 1888, signed by C. F. Fairchild, Secretary of the Treasury, as the basis of our action.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., August 15, 1888.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th instant, inclosing copy of H. R. 11138, for relief of Abbie Burton, directing the Secretary of the Treasury "to pay to said Abbie Burton, widow of P. P. Burton, deceased, late of Little Rock, in the State of Arkansas, out of any money in the Treasury not otherwise appropriated, the sum of \$202, the same being the amount standing to the credit of said P. P. Burton on the books of the Treasury of the United States as shown by page 9, Ex. Doc. No. 363, first session, Forty-ninth Congress," and asking that your committee be furnished with any information relative to the matter in possession of the Treasury, that will enable it to act intelligently in the premises.

In reply I have to inform you that said sum of \$202, reported in Executive Document above mentioned as standing to the credit of said P. P. Burton, is represented by Treasury drafts Nos. 720 and 958, drawn January 15 and February 23, 1861, upon the United States depository at Little Rock, Ark., in favor of Dr. P. P. Burton for \$90 and \$112, respectively.

As the drafts in question had not been reported paid and returned to this Department by the depository at Little Rock, Ark., their amounts were covered into the Treasury in the year 1866, under the provisions of the act of May 2, 1866, to the credit of the appropriation "outstanding liabilities," and to the personal credit of the payee, and are now payable upon claim of payee, or his heirs or assigns, under the provisions of section 308, Revised Statutes United States, upon presentation at this Department of the drafts, or, in case they have been lost, proof of such loss and a bond of indemnity, with proof of loyalty of the said P. P. Burton, as required by section 3480, Revised Statutes of the United States.

Respectfully, yours,

C. S. FAIRCHILD,
Secretary.

Hon. W. J. STONE,
Chairman of Committee on War Claims, House of Representatives.

MRS. FANNIE E. GARDNER.

JUNE 4, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHELL, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 8928.]

The Committee on War Claims, to whom was referred the bill (H. R. 8928) for the relief of Mrs. Fannie E. Gardner, report that they have carefully examined the same and find the following facts:

Mrs. Fannie E. Gardner was on the 11th day of April, 1865, a widow, then Mrs. Fannie E. Mitchener, living on her farm in the county of Johnston, State of North Carolina. On that day her premises were fired by Federal soldiers and—

Cotton, worth	\$12, 150
Cotton seed, worth.....	240
Corn and forage, worth	250
Three horses, worth	225
Gin house and machinery, worth.....	1, 500
Total.....	14, 365

were completely destroyed.

She had lately settled in Johnston County, N. C., having removed from the State of New York. She was then, and always has been, loyal to the United States Government; had never given aid, comfort, or encouragement to the rebellion. Said burning and destruction was wanton and needless, and it was not required by the exigencies of the military situation and was in no respect a military necessity, the section in which she lived being within the Federal lines.

Your committee report back the accompanying bill and recommend that it do pass.

Your committee also send herewith the evidence introduced before the committee to be printed as a part of this report.

PETITION.

To the Congress of the United States:

This, the petition of Mrs. Fannie E. Gardner to the Congress of the United States, respectfully showeth:

That during the late civil war and a number of years after its close she was a resident of Johnston County, in the State of North Carolina, her home and residence being on her plantation about 2 miles southeast from Smithfield, N. C., and immediately upon one of the roads leading from the town of Goldsboro, N. C., to the town of Smithfield, N. C., and thence to Raleigh, N. C. That she was

a native of the State of New York and became a resident of North Carolina a short time before the commencement of the war.

That during the whole of the late war she was friendly and loyal to the United States and took no part in the rebellion, and that she did no act which was hostile or injurious to the United States, and that she in no way aided or assisted in, or gave aid or assistance to the rebellion, except in the compulsory payment of tithes and taxes, etc., which she could in no way avoid paying.

That in April, 1865, she was a widow, then Fannie E. Mitchener, living on her said farm with her two small stepchildren, and that she had in her ginhouse on said plantation all the cotton that she had produced on said plantation during the years 1862, 1863, and 1864, which amounted to about 60,000 pounds of cotton "in the seed," that is, not ginned. That her large ginhouse was completely filled with cotton and that her barn was partially filled with cotton. That in addition to this cotton she had in the said ginhouse certain valuable machinery, such as a gin, running gear, belts, pulleys, etc., and in her barn she had about 200 bushels of corn and 5,000 pounds of forage and three horses.

That on or about the 11th day of April, 1865, a portion of the Army of the United States, under the immediate command of Maj. Gen. J. M. Schofield, was passing by and over her said plantation on the march from Goldsboro to Raleigh, N. C. That Gen. Schofield stopped at her house and remained there for one night and day, and that a guard was provided for her residence.

That soon after Gen. Schofield departed from her residence some of the soldiers belonging to the Army overran her plantation, seized her three horses, and wantonly and without excuse, necessity, or justification burned her ginhouse and the cotton and machinery therein contained, and her barn and the cotton, corn, and forage therein contained.

That the said burning and destruction of her said property was wanton and needless and that it was not required by the exigencies of the military situation, and was in no respect a military necessity; that there was no fighting going on there or anywhere near on that day, and that no part of the Confederate army was anywhere in the neighborhood of her plantation; but, on the contrary, as she is informed and believes, was at that time near the city of Raleigh, about 30 miles distant.

That the cotton destroyed as aforesaid was worth at the time of its destruction at least \$12,150 in gold; that the seed destroyed with said cotton was worth \$240; that the corn and forage were worth \$250; that the ginhouse, machinery, etc., and barn, were worth at least \$1,500; and that the three horses were worth \$225; and that her total loss from the said fire and destruction, was at least, \$14,365, and, that she has not received any compensation whatever for her said loss.

Wherefore she respectfully prays that the Congress of the United States shall provide for and direct the payment to her of such a sum of money as shall justly compensate her for said loss.

Respectfully submitted.

FANNIE E. GARDNER,
Petitioner.

STATE OF NORTH CAROLINA, *County of Johnston:*

Mrs. Fannie E. Gardner (formerly Fannie E. Mitchener), being duly sworn, says that the foregoing petition is true of her own knowledge, except those facts therein stated upon information and belief, and as to those she believes it to be true.

Sworn to and subscribed before me this March 21, 1892.

W. S. STEVENS,
Clerk Superior Court of Johnston County, N. C.

SUPERIOR COURT OF THE CITY OF NEW YORK,
JUDGES' CHAMBERS, NEW COURT HOUSE,
New York, February 8, 1892.

DEAR MADAM: In reply to your letter of February 2, I beg to say that I fully recall the occasion upon which I met you at your home in North Carolina during the last year of the late civil war. I was at that time major of the One hundred and fiftieth Regiment New York State Volunteer Infantry, assigned to duty as provost-marshal in the First Division, Twentieth Army Corps. We had made the march through Georgia to the sea, and were on our way northward, when,

sometime in April, we reached the locality where you were then living. On the day in question our division was on the advance; the hour for going into camp for the night was approaching, when some scout, as I now recall it, approached the head of our column where I was riding with the general in command and stated that a plantation not far in advance was occupied by a widow and her children, and that she stated that she was a loyal woman originally from the State of New York, and had been at one time a pupil at the Claverack Institute, Columbia County, N. Y. Having attended that institution for several years, I was curious to ascertain if I was able to recognize the widow, and rode on in advance of the column and met you under the circumstances stated in your letter.

I remember Gen. Scofield's presence at your house, while I was there that evening, and of introducing you to him and asking him to extend to you such protection to your person and property as a loyal woman was entitled to receive from the Union Army. He cheerfully complied with my request—his action would have been the same, I apprehend, had no such request been made, when he had met you and learned the facts. When I was able, however, to introduce you to him as my former classmate, it is not improbable that he took some additional interest in your situation.

After the immediate protection extended to you by Gen. Scofield was removed, as was unavoidable when his army moved onward, the unfortunate destruction of your property followed. I know of no reason why you are not entitled to recover for such damage as you sustained by the loss of your buildings, cotton, and other property; and I earnestly commend that provision be made by Congress to reimburse you. I will put this recommendation in any shape that will be most useful to you, and ask some of my acquaintances in Congress to render you such services in the matter as your application merits.

Very sincerely yours,

H. A. GILDERSLEEVE.

Mrs. FANNIE E. GARDNER,
Smithfield, N. C.

Affidavit of Judge H. A. Gildersleeve.

H. A. GILDERSLEEVE, being duly sworn, says:

That he knew Mrs. Fannie E. Gardner in early life, when she was a resident of the State of New York and was a student at the Claverack Institute in Columbia County, N. Y. That she was then Miss Fannie E. Secor. That in April, 1865, he was major of the One hundred and fiftieth Regiment New York State Volunteer Infantry, in the army of the Tennessee, and was assigned to duty as provost-marshal of the First Division of the Twentieth Army Corps.

That in the early part of April, 1865, the said command was in advance and was in the vicinity of Smithfield, N. C., on the march from Goldsboro to Raleigh, when some one informed him that a widow and her children were living on a plantation not far in advance, and that she was a loyal woman, originally from the State of New York. That he rode ahead of the command and discovered that the lady referred to was the person whom he had formerly known at the Claverack Institute as Miss Fannie E. Secor.

That he was informed then by others, as well as herself, that she was and had been during the whole of the war loyal to the Union.

That he remained at her home some little time and introduced Gen. John M. Schofield to her, and asked him to accord to her and her property such protection as a loyal woman should receive from the Union Army.

This was done, but that as the Army passed on it became necessary to remove the guards, and the destruction of the property then occurred.

That there was no fighting near that day and no enemy near, and that there was no military exigency which made the destruction of her property necessary or advantageous to the Union Army; but that, so far as he can learn, the said destruction was entirely wanton and unnecessary.

H. A. GILDERSLEEVE.

Sworn to before me this 5th day of May, 1892.
[SEAL.]

DAVID MCADAM,
Judge of Superior Court.

Affidavit of Levi Dublin.

LEVI DUBLIN, being duly sworn, says:

That until the close of the late war he was a slave belonging to the estate of the late George W. Watson and lived about 1 mile from the residence of Mrs. Fannie E. Mitchener, now Gardner.

That the Watson plantation, on which he lived, lies east of Mrs. Mitchener's place and was first reached by the Army of the United States, and that on the 11th day of April, 1865, he was required by some of the soldiers of the said United States Army to go with them up to Mrs. Mitchener's plantation and to her gin-house.

That with the said soldiers he reached her ginhouse at about 10 or 11 o'clock on the morning of April 11, 1865. That after reaching her ginhouse some one of said soldiers, from his dress and manners apparently an officer, gave the order to the other soldiers to burn the ginhouse and barn, and that immediately the said soldiers set fire to the said cotton and in a few minutes the whole building was in flames and together with the adjacent barn was completely destroyed.

That he had often seen the said ginhouse, barn, etc., and had often been in them previous to their destruction, and that he knows that both stories of the ginhouse were filled and packed with seed cotton up to the roof, and that the barn had a great deal of cotton in it: That he does not know how much cotton there was in the said buildings when they were burned, but that shortly before their destruction he had heard Devereux Mitchener (now dead), but then the colored foreman on said plantation say that there were about 50 bales of cotton in said ginhouse and barn. That in the barn besides the cotton there was a lot of corn forage, peas, etc., but how much he can not say.

That he does not live on the land of Mrs. Fannie E. Gardner, and has no interest in her claim for said loss, and that he is not concerned, directly or indirectly, in the prosecution of the said claim.

his
LEVI X DUBLIN.
mark

Sworn to and subscribed before me March 10, 1892.

[SEAL.]

W. S. STEVENS,
Clerk Superior Court of Johnson County.

Affidavit of Nathan Snipes.

NATHAN SNIPES being duly sworn, deposes and says:

That during the year 1864 he was an overseer for Mrs. Fannie E. Mitchener, now Gardner, on her plantation near Smithfield, N. C.: That when he began work with her he found her large ginhouse about filled with seed cotton, and upon inquiry learned that no cotton had been ginned for the two preceding years, and that all the plantation made during the said two years had been stored and then removed in said ginhouse; that during the year 1864 he planted and cultivated for her on her said plantation about 20 acres of the best land in cotton, and made a very fine crop—he thinks at least 15 bales, but he can not say precisely; that only the best land was planted; that well-manured with stable manure, well-cultivated, the seasons good, and a very fine crop made.

That this crop was picked and packed unginned into the ginhouse until it was filled and then into the shed or barn. That besides this cotton there was in said barn a lot of corn, peas, forage, etc., and that the said buildings and their contents were destroyed by soldiers of the United States Army on April 11, 1865.

That the ginhouse was a very large and substantial building and, together with the machinery contained therein, cost at least \$1,500.

That he knew Mrs. Mitchener, now Mrs. Gardner, during the war, and knows that she was loyal to the United States Government and fully sympathized with the cause of the Union, and that he knows that she was regarded at that time as being a Northern lady of loyal and Union sympathies. That he never knew nor heard of her saying or doing anything disloyal to the Government of the United States, and never knew nor heard of her saying or doing anything to aid, assist, or encourage the late Confederacy.

That he is not related to Mrs. Fannie E. Gardner, does not live on her land, and is not concerned nor interested, directly or indirectly, in the prosecution of her claim.

his
NATHAN X SNIPES.
mark

Sworn to and subscribed before me March 12, 1892.
[SEAL.]

W. S. STEVENS,
Clerk Superior Court for Johnston County, N. C.

Affidavit of Sophronia Smith.

SOPHRONIA SMITH, being duly sworn, deposes and says:

That until the end of the late war she was a slave belonging to the estate of the late Agrippa Mitchener, and in April, 1865, she was living on the plantation of his widow, Mrs. Fannie E. Mitchener, now Gardner; and that she saw United States soldiers fire and burn the ginhouse, barn, cotton, corn, peas, etc., belonging to the said Mrs. Fannie E. Mitchener; that the said buildings and contents were burned in the forenoon of said day, about 10 or 11 o'clock; that she knows they were set on fire by the soldiers of the United States Army; that she does not know exactly how many bales of cotton there were in the ginhouse and barn, but she had often heard her father, Devereux Mitchener, then foreman on said plantation, now dead, say that there were about 50 bales of cotton packed unginned in the said ginhouse and barn, and she knows that it was all burned.

That she assisted in picking the said cotton out of the field and putting it into the said buildings. That both floors or stories of the said ginhouse were packed and filled with cotton until they would hold no more. That the upper story was filled up to the roof, and that when no more could be put into the ginhouse a great deal more was packed into the barn. That no cotton had been ginned since the first year of the war.

That besides the cotton there was burned a large lot of corn, peas, forage, etc.

That she does not live on the lands of Mrs. Fannie E. Gardner and has not for a great number of years, and is not interested, directly or indirectly, in the prosecution of this claim.

her
SOPHRONIA X SMITH.
mark

Sworn and subscribed to before me March 12, 1892.
[SEAL.]

W. S. STEVENS,
Clerk Superior Court, Johnston County, N. Y.

Affidavit of Candace Smith and Bersheba Watson.

CANDACE SMITH and BERSHEBA WATSON, being duly sworn, depose and say:

That until the end of the late war they were slaves belonging to the estate of the late Agrippa Mitchener, late husband of Mrs. Fannie E. Mitchener, now Mrs. Fannie E. Gardner, and that in April, 1865, they were living on the plantation of the said Mrs. Fannie E. Mitchener, now Gardner.

That they saw her ginhouse and barn fired and burned by soldiers of the United States Army on April 11, 1865.

That they were on the lot in full view of the ginhouse and saw the said soldiers fire and burn it.

That they know that the ginhouse was completely filled with cotton; that both stories were packed full, and the upper story was packed full up to the roof; that they helped to pick said cotton out of the fields and to pack it into the ginhouse; that no cotton has been ginned since the first year of the war, and that after the ginhouse was filled until it would hold no more a great deal of cotton was packed into the barn, and all this was burned.

That besides the cotton in the barn there was a large lot of corn, forage, pease, etc., which was also burned.

That they do not know how many bales were burned, but before it was burned

they often heard the overseer and the foreman, Devereux, say that there were about 50 bales of cotton in the gin and barn.

That they do not now reside on the lands of Mrs. Fannie E. Gardner, and are not interested, directly or indirectly, in this claim, and are not concerned in the prosecution of the same.

CANDACE ^{her} X SMITH.
mark.

BERSHEBA ^{her} X WATSON.
mark.

Sworn and subscribed before me March 11, 1892.
[SEAL.]

W. S. STEVENS,
Clerk Superior Court.

Affidavit of Morris Mitchener.

MORRIS MITCHENER, being duly sworn, deposes and says:

That prior to and during the late war he was a slave and belonged to the estate of the late Agrippa Mitchener, husband of Mrs. Fannie E. Mitchener, now Gardner, and that he lived during said war and for many years after the war upon the lands of the said Mrs. Fannie E. Mitchener, now Gardner, and was living on said plantation at the time the army of the United States passed by and over the same in the spring of 1865.

That on or about April 11, 1865, he was at the residence of the said Mrs. Fannie E. Mitchener and saw her ginhouse and barn when they were set on fire and burned. That the said ginhouse and barn were burned by soldiers of the United States Army, and that he saw them fired and burned.

That there were stored in said ginhouse and barn all the cotton which the said Mrs. Fannie E. Gardner had raised during the three preceding years, amounting in his opinion to as much as 45 bales of cotton. That the cotton was packed "in the seed" (unginned) into the ginhouse, which was a large two-story building. That both stories or floors were completely filled with cotton, and that the upper story was packed and filled with cotton up to the roof and until it would hold no more.

That after the ginhouse was completely filled in both stories with cotton, as aforesaid, more cotton was piled and packed into a large shed or barn, and that all this cotton, together with the buildings, machinery, etc., were burned on April 11, 1865, by the soldiers of the United States Army, as aforesaid.

That besides the cotton there was destroyed in said barn a large quantity of corn—about 200 bushels—a large quantity of forage, and about 100 bushels of pease.

That he does not now live on the land of Mrs. Fannie E. Gardner, she having sold the land, but that he still resides on the same place. That he is not interested, directly or indirectly, in the claim for the loss of said property and is not concerned in the prosecution of the same.

MORRIS ^{his} X MITCHENER.
mark

Sworn to and subscribed before me March 10, 1892.
[SEAL.]

W. S. STEVENS,
Clerk Superior Court of Johnston County.

Affidavit of H. H. Maynard.

H. H. MAYNARD, being duly sworn, deposes and says:

That he was a soldier in the Confederate Army during the late war; that in April, 1865, having previously been wounded, he was at his home near Smithfield, N. C.; that his home and farm adjoined the lands of Mrs. Fannie E. Gardner, then Mitchener; that his home was distant from hers about a half mile.

That while he was at home wounded, he frequently went over to her place and on several occasions consulted and advised with her as to the best method of saving her cotton, and on several occasions went to her ginhouse.

That he is of the opinion that at the time her property was burned she had at least fifty or sixty thousand pounds of cotton in the seed.

That her gin was completely filled and that she had a great deal in her barn.

That he was in her lane when her gin was fired. That he saw it burn and knows that it was burned by soldiers of the United States, together with the cotton therein contained, the ginhouse, gin and machinery, and her barn and contents.

That he is of the opinion that the ginhouse, gin, machinery, barn, etc., were worth at least \$1,500.

And this deponent further saith: That he is not related by blood or marriage to Mrs. Fannie E. Gardner and is not interested, near or remotely, in the subject-matter of this claim.

his
H. H. X MAYNARD.
mark.

Before me, W. S. Stevens, clerk of the superior court of Johnston County, N. C., personally came H. H. Maynard, well known to me, who being by me duly sworn, says that the foregoing affidavit is true of his own knowledge.

Witness my hand and seal of office this 5th day of March, 1892.

[SEAL.]

W. S. STEVENS,
Clerk Superior Court.

Affidavit of John Smith.

JOHN SMITH, being duly sworn, deposes and says:

That during the late war he was a minor officer of the State militia, and did not go to the front during the war; but, except at short intervals, when on militia duty, remained at home, about 2½ miles east of the home of Mrs. Fannie E. Mitchener, now Gardner, and frequently saw her during the war; that he knew her to be loyal and friendly to the cause of the Union; that she was opposed to the war of secession and to the Confederate Government; that he knew her to be friendly to the Government of the United States during the war, and that during the war he never heard or knew of her doing or saying anything disloyal or hostile to the United States; and never knew nor heard of her doing or saying anything friendly to or in aid of the Confederacy or encouraging to the cause of secession; that if she had said any such thing or done any such act he feels sure that he would have heard of it; and that to this day he has not heard of any such act or word; that she was known and regarded by the public as being a Northern lady of Union and loyal sentiments and sympathies, whom force of circumstances detained at the South during the war; that because of her known loyalty and Northern nativity great surprise was shown by the public when her ginhouse, barn, cotton, corn, etc., were destroyed by the Army of the United States.

That there was no fighting near Mrs. Mitchener's when her property was burned; that there were no Confederate troops within many miles of her place; that there was no military or practical necessity for the destruction of her property; that its destruction was of no advantage to the Army of the United States, and was wanton and needless.

That in April, 1865, he was at his said home while the army of Gen. Schofield was passing on the road by his place, from Goldsboro to Raleigh; that knowing of the defenseless and helpless position of Mrs. Fannie E. Mitchener, now Gardner, and her two small stepchildren, and remembering her loyalty, he went out to the road and spoke to the officer then appearing to be in command of the regiment passing and told him that Mrs. Mitchener, a Northern lady, from the State of New York, lived alone with her little stepchildren about 2 or 3 miles up the road; that she was and always had been loyal to the Government of the United States; that no white man lived on the lot and that she ought to have protection while the army was passing; that after several questions from said officer and a short conversation between them the said officer said he would call by at Mrs. Mitchener's and see that she had protection, and he afterwards learned that the officer did stop at the house.

That he does not know the name of the said officer nor does he know the regiment which he commanded, but from the facts which have come to his knowledge

since that time he is satisfied that it must have been Col. Gilderslieve, now one of the judges of the superior court for the city of New York.

That he is not related by blood or marriage to Mrs. Fannie E. Gardner, and has no interest, near or remote, in the prosecution of her claim.

JOHN SMITH.

Sworn to and subscribed before me March 12, 1892.

[SEAL.]

W. S. STEVENS.

Clerk Superior Court, Johnston County, N. C.

Affidavit of Col. Adam J. Heath.

Col. ADAM J. HEATH, being duly sworn, deposes and says:

That he has known Mrs. Fannie E. Gardner intimately since she moved to Johnston County in 1859. That his plantation adjoined hers, and that he was her nearest neighbor, and that between his and her families there was constant visiting.

That during the late war he was not engaged in active hostilities at the front, but was elected a colonel in the State militia and performed home service during the war, and was absent from home only on short intervals.

That during the whole of the war he was well and intimately acquainted with Mrs. Fannie E. Gardner, then Mrs. Fannie E. Mitchener, and knew her to be earnestly opposed to secession and to the war, and to be an earnest lover of the Union and the Government of the United States. That he often heard her express herself to that effect to him during the war. That he never knew of her doing or heard of her saying anything which was hostile, injurious, or disloyal to the Government of the United States. That he never knew nor heard of her saying or doing anything which would aid, abet, assist, or encourage the Confederate government, and that he feels sure that if she had done or said anything hostile to the Union, or had done or said anything friendly to the Confederate government, he would have heard of it, and until this day he has never known or heard of any such word or deed.

That during the whole of the war she was regarded by himself and he believes by the public generally as a Northern lady with Union sentiments, whom force of circumstances detained at the South.

That during the war he knows that she planted a part of her plantation in cotton each year, and made an average, he thinks, of about 15 bales of cotton a year. That at the end of the war he knows that she had a large quantity of cotton in the seed stored in her ginhouse, a very large quantity, but how much he can not say—and that all this, together with her ginhouse and barn, were burned by the soldiers of the United States Army on April 11, 1865. That he saw the smoke and fire from the said ginhouse when it was burned, and at that time was in his own yard in conversation with an officer of the Union Army, and when he and the officer saw the smoke the officer said he feared some of the soldiers had fired the ginhouse at Mrs. Mitchener's, although he had given orders that nothing should be burned or molested on her plantation. That he does not know the name of this officer, nor does he remember his rank.

That he is not related by blood nor marriage to Mrs. Fannie E. Gardner, and is not directly nor indirectly interested in this claim, nor is he in any manner concerned in the prosecution of the same.

A. J. HEATH.

Sworn to and subscribed before me March 11, 1892.

[SEAL.]

W. S. STEVENS,

Clerk Superior Court.

Affidavit of Guilford Watson.

GUILFORD WATSON, being duly sworn, deposes and says:

That until the close of the late war he was a slave belonging to the estate of the late George W. Watson and lived on the plantation of the late George W. Watson, which lay about 1 mile east of the plantation of Mrs. Fannie E. Mitchener. That he often visited the said Mitchener plantation; that his wife lived

and belonged upon the said place, and that he was perfectly familiar with the said plantation.

That he knows that at the time the army of Gen. Schofield passed the said plantation in April, 1865, the ginhouse was filled from bottom to top with cotton in the seed, and that the barn was also partially filled with seed cotton; that he does not of his own knowledge know how much cotton there was in said buildings at the time of their destruction, but that he knows that no ginning had been done for three years; that is, since the fall of the first year of the war, and that he frequently heard Devereux Mitchener, the foreman, and others say before the destruction of the said buildings that there were about 50 bales of cotton stored "in the seed" in said buildings, and besides the cotton there was stored in the barn a large lot of corn, peas, forage, etc., but how much he is not able to say, and that all of said cotton, corn, peas, forage, etc., together with the buildings and the machinery therein contained, were burned on April 11, 1865, by certain soldiers of the United States Army.

That he was present and saw the said buildings and property fired and burned. That he was near the gate of the gin lot, and that he saw and heard a man dressed in the uniform of an officer order the soldiers to burn said property, and that in obedience to his order three of the soldiers immediately set fire to the cotton, and that the ginhouse and barn, with all their contents as before set out, with the machinery, etc., were completely destroyed.

That he does not live on the land of Mrs. Fannie E. Gardner, and is not interested directly or indirectly in her claim for compensation for said loss, and is not concerned in the prosecution of the same.

his
GUILFORD X WATSON.
mark

Sworn to and subscribed before me March 10, 1892.
[SEAL.]

W. S. STEVENS,
Clerk Superior Court of Johnston County.

Affidavit of Christopher Radford.

CHRISTOPHER RADFORD, being duly sworn, deposes and says:

That during the greater part of the late war he lived about 2½ miles from the residence and farm of Mrs. Fannie E. Gardner, then Mitchener. That he passed the plantation at least twice a week during most of the war and was well acquainted with the said Mrs. Mitchener; and that he believes and knows that she was regarded by the public as being loyal to the United States, and opposed to secession and to the war. That he was satisfied himself then and is now still satisfied that the said Mrs. Fannie E. Mitchener, now Gardner, was loyal to the United States during the entire war. That he knows she in no way aided, encouraged, or assisted in carrying on the war. That he knows that the soldiers of the United States Army burned her ginhouse, cotton, etc., but how much cotton he does not know.

That he is not related by blood or marriage to Mrs. Fannie E. Gardner and is not interested directly or indirectly in her claim or in the prosecution of the same.

C. RADFORD.

Sworn to and subscribed before me March 12, 1892.
[SEAL.]

W. S. STEVENS,
Clerk Superior Court, Johnston County, N. C.

Affidavit of David W. Adams.

DAVID W. ADAMS, being duly sworn, deposes and says:

That during the late war he was well acquainted with Mrs. Fannie E. Mitchener, now Gardner; that he was often at her house and she at his.

That he had frequent conversations with her and knows that during the whole of the war she was friendly and loyal to the Government of the United States and to the cause of the Union.

That he knows she was regarded by the public generally as being a Northern lady, who was loyal to the Union, but whom force of circumstances detained in the South.

That he never knew or heard of her doing or saying anything disloyal to the United States Government, or of her doing or saying anything which might aid or assist the late Confederacy.

That because of her known loyal sentiments much surprise was expressed by the public when her property was destroyed by the soldiers of the United States Army.

That there was no reason or necessity for the destruction of her said property from a practical or military point of view. That on the 11th of April, 1865, there were no Confederate troops anywhere near Smithfield, nor was there any fighting anywhere near.

That the destruction of Mrs. Mitchner's property was of no advantage to the Army of the United States, and that its destruction was wanton and unnecessary.

That he is not related by blood or marriage to Mrs. Fannie E. Gardner, and is not concerned directly or indirectly in the prosecution of this claim.

D. W. ADAMS.

Sworn and subscribed to before me March 12, 1892.

[SEAL.]

W. S. STEVENS,
Clerk Superior Court.

Affidavit of L. R. Waddell.

L. R. WADDELL, being duly sworn, deposes and says:

That he is now a practicing attorney, and resides in the town of Smithfield, N. C., and that he has resided in that town continuously since the year 1859.

That during and just after the late civil war he was solicitor or prosecuting attorney of the county court and clerk and master of equity of Johnston County, and by reason of his holding the said offices did not serve in the army, but remained at home and resided in the town of Smithfield, N. C. That Mrs. Fannie E. Gardner, then Mitchener, having just married to the late Agrippa Mitchener, moved to Johnston County about the time he moved to Smithfield, which was in 1859. That about the beginning of the war Agrippa Mitchener died and his wife was left a widow, and during the remainder of the war she resided upon her plantation, about 2 miles from Smithfield, with her two stepchildren, then small.

That he often saw her during the war and heard of her, and that he never knew or heard of her doing any act or saying anything which was hostile, injurious, or disloyal to the Government of the United States; and that he is of the opinion that, occupying the positions which he did occupy, if a person of Mrs. Mitchener's prominence had done or said anything of a nature hostile to the said Government of the United States he would have heard of it.

That the said Mrs. Fannie Michener, now Gardner, was a lady of Northern birth, who came to the South just before the war, and that during the war he and, he thinks, the public likewise regarded her as a lady of Union sympathies and opinions and as being loyal to the Union and to the Government of the United States.

That he never knew her to give any assistance, aid, or encouragement, by word or deed, to the late Confederate government.

That he is not related to Mrs. Fannie E. Gardner in any manner, and is not concerned or interested, directly or indirectly, in the prosecution of her claim.

L. R. WADDELL.

Sworn to and subscribed before me March 12, 1892.

[SEAL.]

W. S. STEVENS,
Clerk Superior Court for Johnston County, N. C.

Affidavit of Seth Woodall.

SETH WOODALL, being duly sworn, deposes and says:

That he is now and has been for a great number of years, beginning before the war, engaged in mercantile business in the town of Smithfield, N. C.

That during the late war he was for a part of the time a member of the general assembly of North Carolina for Johnston County and afterwards a lieutenant in the State militia, and that he took very little part in the active hostilities during the war but remained at home except some temporary absences such as attending upon the sessions of the general assembly and short periods of service in the State militia.

That during the whole of the war he was acquainted with Mrs. Fannie E. Mitchener, now Mrs. Fannie E. Gardner, and that he knew her to be a Northern lady, and that he at that time regarded her as being loyal to and sympathizing with the cause of the Union and of the United States Government. That he thinks that was the general opinion at the time among her acquaintances as to her opinions and sympathies, but that he can not state it as a fact.

That he often saw her and never knew or heard of her doing any act or uttering any sentiment which was hostile, injurious, or disloyal to the United States, nor did he ever know or hear of her doing any act or uttering any sentiment friendly to the cause of secession, or to the Government of the Confederacy, nor did he ever know or hear of her saying or doing anything to the aid, comfort, encouragement, or assistance of the said Confederate Government.

That he is of the opinion that if she had done acts of hostility or disloyalty to the Government of the United States, or if she had in any manner aided, assisted, or encouraged the Confederacy he would have heard it, and that he has not to this day heard of any such.

That he is not related to Mrs. Fannie E. Gardner, and is not interested, near or remotely, in the prosecution of her claim.

SETH WOODALL.

Sworn to and subscribed before me March 11, 1892.

[SEAL.]

W. S. STEVENS,
Clerk Superior Court of Johnston County, N. C.



APPROPRIATION FOR DEPARTMENT OF AGRICULTURE.

JUNE 7, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HATCH, from the Committee on Agriculture, submitted the following

REPORT:

[To accompany H. R. 9089.]

The Committee on Agriculture respectfully submit the following report:

The bill herewith submitted appropriates \$3,190,495.50 for the fiscal year ending June 30, 1893.

This is an apparent increase of \$322,342 over the appropriation for the present year.

A deficiency bill to enable the Secretary of Agriculture to carry into effect the act of March 3, 1891, providing for an inspection of meats and live animals for food intended for export has previously been enacted, and with it a deficiency to enable the Department to continue experiments in the manufacture of sugar. The first carried \$150,000 and the second \$10,000. These items added to this bill would make the total appropriations for the Department of Agriculture \$3,350,495.50, an increase of \$482,342.50.

The Department estimate for the requirements for the coming year was \$3,360,995.50, and the appropriation carried by the deficiency bill and this one would, consequently, be \$10,500 less than the estimate.

The principal item of increase of expense in the administration of the Department of Agriculture is in the carrying out of the provisions of the meat-inspection act of March 3, 1891. This work will require \$500,000 for the current year, and the appropriations are increased to that extent. The operation of the inspection act has been entirely satisfactory, having during the past year removed the embargo against American pork and given our meats free entry to several European countries from which they had been barred.

An increase of \$2,500 has been made in the appropriation to enable the Secretary of Agriculture to continue investigations concerning the feasibility of extending the demands of foreign markets for agricultural products of the United States. The principal object of this expenditure is to introduce and bring American corn into general use as an article of food in European countries, and the efforts so far made have been eminently successful.

No change has been made in the salary list, excepting an increase of \$1,000 temporary compensation for the chief of the Bureau of Animal Industry, whose duties and responsibilities have been very largely increased by the meat-inspection act.

The transfer of the Weather Bureau from the War to the Agricultural Department has very largely increased the aggregate appropria-

tion for the latter Department over former years. Your committee have carefully studied the operations of this Bureau, and desire in this connection to commend its management and its efficiency for good. In pursuance of demands, especially from agricultural districts not now covered by this service, your committee have in this bill provided six additional forecast officials at an increase of \$6,000 and given the Bureau \$20,000 additional for printing necessary maps, bulletins, monthly weather reviews, and other meteorological data for distribution and display in the interest of agriculture, commerce, and navigation.

The appropriation for the purchase of valuable seeds and plants has been increased \$30,000, on account of the increased demands upon the Department and the inadequacy of the supply possible to be furnished by the former appropriation.

Reductions made by this bill from former appropriations are as follows:

Ten thousand dollars in the division of botany; \$10,000 in the division of entomology; \$10,000 in the section of biological investigation; \$5,000 in the division of vegetable pathology; \$5,000 in the section of fiber investigation; \$2,000 in repairs of building and furniture; \$5,000 in experiments in the manufacture of sugar; and \$6,000 in the Weather Bureau list of professors of meteorology, in accordance with recommendation from the Department.

In accordance with recommendations from the Secretary of Agriculture, the experiments in the production of rainfall are authorized to be continued, and an appropriation of \$10,000 made for this purpose, this being a decrease of \$2,000 from the amount jointly allowed for this work and that to be performed by the division of forestry under the last appropriation act.

An important change made by this bill is that by which the reports of the statistical division issued monthly shall be strictly confined to a statement of the percentage totals by States and full total, without comment or argument, the same to be officially approved by the Secretary of Agriculture before it is issued or published.

WILLIAM MCGARRAHAN.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COWLES, from the Committee on Mines and Mining, submitted the following

REPORT:

[To accompany S. 1958.]

The Committee on Mines and Mining have had under consideration the bill (S. 1958) "to submit to the Court of Private Land Claims, established by an act of Congress approved March 3, 1891, the title of William McGarrahan to the Rancho Panoche Grande, in the State of California, and for other purposes," and, adopting the report of the Senate accompanying the same, recommend the passage of said bill.

Senate Report No. 489, Fifty-second Congress, first session.

Mr. TELLER, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill S. 1958.]

The Committee on the Judiciary, to whom was referred the bill (S. 1958) to submit to the Court of Private Land Claims, established under an act of Congress approved March 3, 1891, the title of William McGarrahan to the Rancho Panoche Grande, in the State of California, and for other purposes, submit the following report:

The subject-matter of this bill has been before Congress for twenty-five years, while the controversy over the title to the lands in question extends over ten years more of time in the courts and in the executive departments. Thus the question involved has remained unsettled for over a quarter of a century, and Mr. McGarrahan, the beneficiary of this bill, has been left all this time uncertain as to his rights, though anxious to have them determined. The present bill provides that the controversy over the ownership of the Rancho Panoche Grande shall be referred to the Court of Private Land Claims for determination of the title of the same, and your committee are of opinion that in justice to all concerned the bill should be passed and this disposition made of the matter.

ATTEMPTED LEGISLATION.

Numerous bills for Mr. McGarrahan's relief, some of them providing for the reference of the subject to the Court of Claims, and others for the absolute confirmation of the title in Mr. McGarrahan without further litigation, have been made both to the Senate and the House of Representatives, and such bills have passed three different times in the House. The bills in each case have provided for Mr. McGarrahan's indemnification. (See Exhibit —.)

Although nominally carried on between William McGarrahan on the one side and the United States on the other, the real contestant of McGarrahan's title has been the New Idria Mining Company. That company got possession of the New Idria quicksilver mine about the time McGarrahan purchased the tract of land, and has held possession ever since. The main question to be decided is whether Vincente P. Gomez, under whom McGarrahan claims, had such a title to the land as was protected by treaty with Mexico, commonly known as the treaty of Guadalupe Hidalgo. If he did, then the faith of the Government is pledged to its protection.

The claim first came before Congress during the first session of the Fortieth Congress, and was referred by the House of Representatives

to the Committee on the Judiciary. Mr. James F. Wilson, the chairman of the committee, during the second session of that Congress, submitted a report, which seemed to give an impartial statement of the facts and of prominent proceedings in the matter, as follows:

[Report No. 33, Fortieth Congress, second session.]

Mr. WILSON, from the Committee on the Judiciary, made the following report:

The Committee on the Judiciary, to whom was referred a bill for the relief of William McGarrahan, respectfully submit the following report:

The history of this case is composed of such a multitude of circumstances, spread over a period extending from the year 1844 to the present time, that to give it in detail would be to present a report so voluminous as to defeat the very object contemplated by the House in submitting it to the committee—that of information to its members.

It has, therefore, been deemed advisable to exhibit leading and controlling facts rather than minute and unimportant particulars.

The effort has been to give the present paper a synoptical rather than argumental character, as it is believed a plain but abbreviated narrative will be sufficient to satisfy all inquirers that the bill herewith reported should pass.

An impartial statement of the facts and of prominent proceedings is, in the judgment of the committee, all that is needed to show that Mr. McGarrahan is entitled to the relief he seeks, and to the land in question, as described in his original memorial, presented to the House during the Thirty-ninth Congress.

In the year 1844, Manuel Micheltorena, the then governor of Upper California, in accordance with a Mexican custom to confer lands upon deserving officials and citizens, granted to Vincent P. Gomez a tract of land then, it would seem, considered almost valueless, and situate in the present counties of Fresno and Monterey, State of California. The property was then and is now known as "Panoche Grande Rancho."

The making of this grant has been denied, and this denial constitutes the principal ground from which has sprung the prolonged and exhausting litigation in the case, extending over a period of more than thirteen years.

The proof of the existence of the grant is satisfactory. It is found mainly in the following facts:

I. The deposition of José Castro, who filled the office of political chief of California, and was also prefect and commanding general, which states that Gomez, with whom he was well acquainted, desired him (Castro) to inform him (Gomez) of a suitable place to petition for or secure, and that he recommended the Panoche Grande.

II. The petition of Gomez to Governor Micheltorena, March 13, 1844, requesting a grant of the rancho.

III. A marginal entry made by the governor, March 14, 1844, on the petition of Gomez, that the proper secretary should cause the necessary investigations to be made and make report.

IV. A declaration of the same date, by Manuel Jimino, the secretary, that the petition of Gomez had been transmitted to the first justice of San Juan, in order that he should report what would be just in the matter.

V. The report of the justice, dated March 20, 1844, stating that the land was vacant, and that there was no reason why the same should not be granted.

VI. A map of the land, filed in pursuance of the justice's report.

VII. The affidavit of Valentine Gajiola, employed in the Presidial Company of Monterey in 1848, showing that Gomez applied to him to make a map of the rancho; exhibited to him the title paper duly executed, and that he made the map as desired.

VIII. The deposition of José Abrigo, the head of the commissary department, and resident in Monterey, proving that Gomez was a clerk in his office, and that, in 1845, he (Gomez) showed him a title to the land named, together with a map of the property; that the papers were signed by the governor and secretary, and that he was well acquainted with the signatures of these officers, having often seen them write; that the archives in which these papers were passed into the possession of the American Army July 7, 1846.

IX. The testimony of Abrigo, Dr. James L. Ord, a surgeon in the United States Army, and others, proving the destruction of the archives in Monterey, and the fact that such destruction is generally admitted.

X. The deposition of Oscar De Grandé Barque, stating that Gomez, in 1845, showed him title papers for the rancho, and proposed a sale of the land to him.

XI. The affidavit of J. Marno Bonilla, secretary of the superior tribunal of justice in Monterey, stating that Gomez, in 1841, applied to him for stamped paper, to be used in procuring a title to lands; and that, in 1845, he saw memoranda of grants of land, among which was that of Panoche Grande to Gomez.

XII. The affidavit of Matias Moreno, secretary of state of Upper California, stating that, in 1846, he knew Gomez had obtained a grant for Panoche Grande, and that he saw the grant.

XIII. The affidavits of Maricio Gonzales, José Fernandez, Gabriel de la Torre, Joaquin S. Escamilla, and others, tending to prove the existence of the grant.

XIV. The statement of E. L. Goold, esq., before the Judiciary Committee, that he believed the petition of Gomez was a genuine document, and that he based his opinion on his knowledge of the facts and circumstances connected with the case of said Gomez against the United States, which involved the validity of the grant upon which this case is based. Mr. Goold was of counsel in said case in opposition to the grant, and appeared as a witness before the committee on behalf of the opposing parties.

XV. The grant by Governor Micheltorena, in the year 1844, to Don Julian Ursua, of the tract known as the rancho "La Panoche de San Juan and Los Carrisalitos," wherein the tract is described as being bounded on the south by the mine of "Los Aguilas" and "La Panoche Grande."

XVI. Statement of Henry D. Cooke, esq., that when he was in California, in the years 1847-'48-'49, it was common report that Gomez had received a grant of a rancho near San Juan from the Mexican Government.

XVII. In 1845 the board of land commissioners, at the hearing on the evidence, as required by the laws of the United States, decided that Gomez had given satisfactory proof of the existence and loss of the grant.

1. In the treaty of Guadalupe Hidalgo, entered into between the United States and Mexico February 2, 1848, it was provided that property of every kind belonging to Mexicans should be inviolably respected, and that the United States should pass such laws as would give effect to the different stipulations of the treaty, and always thereafter regularly enforce them. This feature was introduced to secure all landed and other interests that might in any way be affected by a change of jurisdiction over the territory embraced in the treaty (Stats. at Large, vol. 9, pp. 229-231).

2. The law contemplated was passed March 3, 1851 (United States Statutes at Large, vol. 9, p. 631), creating a board of land commissioners, and declaring, among other things, "that each and every person claiming lands in California, by virtue of any right or title derived from the Spanish or Mexican Government, shall present the same to the said commissioners, when sitting at a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claim; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and within thirty days after the said decision is rendered to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered" (sec. 8).

3. February 9, 1853, Gomez, in accordance with the provision of the act of March 3, 1851, presented his petition to the Board of Land Commissioners, praying a confirmation of his claim to the rancho Panoche Grande.

4. The board, having fully heard the evidence of the grant, decided that the claimant had given satisfactory proof of the existence and loss of the grant, but had failed entirely to offer any proof whatever going to show that he ever occupied, improved, or cultivated any part of the land, or that any one ever did for him, or that he ever saw the land; and on the ground of nonoccupancy decided the grant invalid.

5. In the case of *Frémont v. The United States* (17 Howard, 542), decided at December term, 1854, the Supreme Court of the United States held that, in the case of Mexican land grants, omission to take possession of the land did not of itself forfeit the right or grant. Had this determination preceded the action of the board of land commissioners, the grant to Gomez would certainly have been pronounced valid, as the board decided against the grant on the ground that the grantee had not entered upon and possessed himself of the land granted.

6. The decision of the board of land commissioners made an appeal necessary, which was accordingly taken by Gomez, and June 5, 1857, the district court for the southern district of California confirmed his claim, and a decree to that effect was pronounced. But through what is claimed to have been a clerical mistake, and which the party asserts was unobserved for some months, the decree was for three leagues of land instead of four, as claimed, and as proved by the deposition of José Abrigo, used before the board of land commissioners, and in the court, to have been comprised in the grant, and was unsigned by the judge.

7. Thus, as Gomez, his counsel, and all interested might well have supposed, the question of title was settled, subject, of course, to the right of appeal. The records of the district court presenting Gomez as owner of the rancho in accordance with the finding of the board of land commissioners, the decree of the said district court, and the decision of the highest court in the *Frémont* case, Mr. McGarrahan, December 22, 1857, bought the property from Gomez in good faith, and for a valuable consideration.

8. The alleged error in the quantity of land stated in the decree of June 5, 1857, being discovered, an application was made to the court to correct it, whereupon, February 8, 1858, an amended decree was entered *nunc pro tunc* (that is, as of June 5, 1857), covering the four leagues, and duly signed.

9. About the time Mr. McGarrahan purchased from Gomez some persons, having prospected the land, discovered mineral deposits (a fact unknown to Mr. McGarrahan when he purchased), and, finding it had been sold by Gomez, they, as "squatters," took possession of and held it, as they still hold it, either in person or by assignees, cognizant of the facts, and without title.

10. March 15, 1858, the United States appealed from the decree of the district court, as it seems was their practice to do in all cases adjudicated against them, and on July 8, 1858, thirteen months after the final decree of confirmation, a motion was made by special counsel of the United States in the case, as it seems, without notice to the claimant, to have the decree opened.

11. Mr. McGarrahan, having been advised that the appeal to the Supreme Court had been taken by the Government, without examination as to its merits, in accordance with the uniform practice, made application through counsel to Hon. Jeremiah S. Black, the then Attorney-General (a certified transcript of the case being presented to him), to have him examine the case and determine whether he would persist in the appeal.

12. After a full argument before the Attorney-General, that officer directed that the appeal should be docketed and dismissed; and on January 31, 1859, it was so entered upon the books of his office and upon the records of the Supreme Court. Whereupon, in March, 1859, the Supreme Court issued its mandate, which ordered and decreed the docketing and dismissal of the appeal entered in the Supreme Court, and commanded that "such proceedings be had in said case as, according to right and justice and the laws of the United States, ought to be had."

13. The said mandate was filed in the district court May 4, 1859, whereupon the court ordered, adjudged, and decreed that the said mandate should be carried into effect, and that the said Gomez proceed under the decree of the court as under a final decree.

The effect of this was to perfect the title to said rancho in Mr. McGarrahan, as the grantee of Mr. Gomez.

At this stage of the case the most vigilant lawyer consulted by client, and required to examine records, could have given no other opinion upon the state of the records than that a fee-simple interest in the rancho was vested in Mr. McGarrahan.

From this time the parties occupying the property, without title or rightful claim, resorted to divers expedients to defeat McGarrahan's title; accordingly the "squatter's" interest, so called, which vested in the New Idria Mining Company, appealed to controlling officers of the Government. This is shown by the following facts:

1. A consultation between Mr. E. L. Goold, counsel for the "squatters" upon the property alluded to, with the Attorney-General, and immediately thereafter that officer making a motion in the Supreme Court to recall the mandate before spoken of on the ground of fraud and want of jurisdiction.

2. The alleged fraud was declared to consist in the fact that a conveyance of an undivided half interest in the property had been made by Gomez to Pacificus Ord, then representing the United States as district attorney, and that he had consented to the propriety of the original decree of June 5, 1857.

3. It is shown that Mr. Ord, after his appointment to the office he held, not only revealed to the Government the fact that he was interested in the claim, but requested the Government to employ other counsel to attend to its interests.

4. This the Government did not do; the consequence of which was that Mr. Ord, at the time of the original decree, having no evidence militating against the validity of the grant, acquiesced in its confirmation; and, so far as this committee can discover, the representation then made by Mr. Ord was in accordance with facts.

5. At this point in the proceedings it appeared that some influence, unknown to the committee, had caused the file-marks and indorsements on the final order of the district court, made in obedience to the mandate of the Supreme Court, to be erased from the record, as well as the filing of the mandate itself. This seems to have been done on the 18th of January, 1860, more than eight months after the order had been filed. It also appears that certain entries in the books of the Attorney-General's Office respecting the original appeal in this case, and the action of the Government in other appeals, embraced in the same order, were not known to the court or to McGarrahan's counsel in time for them to avail themselves of the benefits thereof, on the hearing of the case in the Supreme Court, on motion by the Attorney-General to revoke the mandate. It will be remembered that it was upon the conclusive evidence of his order that the Supreme Court had directed the proper entry to be made upon their record, and that their mandate was issued.

6. This failure to disclose the facts to the court, by the Government, undoubtedly had much to do in securing the order of the Supreme Court revoking their mandate

of 1859, and which order was strangely withheld until June, 1862, when it was filed by the present claimant for the purpose of again lodging jurisdiction of the case in the court below.

7. But in the meantime (March 21, 1861) the district court annulled its original decree. This extraordinary action on the part of the court seems to have been taken without notice, either to the claimant or his known counsel, and in the absence of both.

8. As soon as this condition of things was ascertained, an application was made to the court to restore the decree, and, upon full hearing, the order, as requested, was made on the 4th August, 1862.

9. Thus matters rested until the 25th August, 1862, when the then district attorney, contrary to express stipulations, entered into between himself and the counsel for the claimant, in their absence, and without notice, obtained an order of appeal to the Supreme Court.

10. The impropriety of this proceeding is made apparent for the reason that, in order to give the Supreme Court jurisdiction, a citation should have been first issued, signed by the judges, served on the claimant, and from return made, with proof of service.

11. The law is very clear upon this point; the acts of 1789 and 1803, which regulate appeals (the appeal not having been taken in open court at the June term in 1857, when the original decree was pronounced, nor at the December term in 1857, when the decree was entered *nunc pro tunc*, or, in other words, within five years, as directed by the statutes), demanded a notice to the opposite party, and the proceeding was therefore clearly wrong. The court, upon a full hearing, reached this determination, and accordingly decided, December 4, 1862, that the appeal allowed August 25, 1862, be vacated and set aside, and that an appeal on behalf of the United States to the Supreme Court be denied.

Here, for the second time, the record evidenced a perfect title in the claimant.

It having been twice judicially determined by the action of the courts that Mr. McGarrahan was the legal owner of the Rancho Panoche Grande, the aggressors upon his rights resorted to a new line of action.

1. As seen, after nine years of litigation, Mr. McGarrahan, the present claimant, succeeded in acquiring two distinct confirmations of his title. It was then, in accordance with the act of Congress of June, 1862, he applied to the United States surveyor-general of California for a survey of the said tract of land, and which officer caused the survey to be made and approved September 11, 1862. This survey was transmitted immediately thereafter to the General Land Office, and a patent for the property was demanded.

2. Here, again, he was confronted by the New Idria Mining Company, before referred to. The Secretary of the Interior at that time (Hon. Caleb B. Smith), after argument in the case, ordered the patent to issue.

Thus, again, for the third time, the title to the Panoche Grande was found to be in Mr. McGarrahan. Some unknown cause delayed the execution of this order, and the patent was not issued. This neglect, or refusal, was persisted in throughout the remainder of Mr. Secretary Smith's term. The matter was then brought to the notice of Mr. Usher, the new Secretary, before whom it was again argued, and by whom a patent was directed to be issued. Neither the order of Mr. Smith nor Mr. Usher was obeyed, for some reason not yet divulged or ascertained.

For the fourth time, the title of Gomez and his grantee was decided to be good and available in law. A request was then made by the claimant of President Lincoln that he would make an examination of the case, and determine it upon its merits. This he consented to do. Printed briefs were laid before him; and, upon full consideration of all the facts and circumstances, he directed the Secretary of the Interior to cause a patent to be issued to Mr. McGarrahan. And thus, for the fifth time, Mr. McGarrahan was declared to be entitled to the property or rancho, and that neither the United States nor any other person had lawful claim to the same.

In accordance with this order of the President of the United States to the Secretary of the Interior, a patent was actually made out; but, for reasons not fully explained, never delivered to him for signature.

To recapitulate:

1. The proof of a legal grant from the Mexican Government to Gomez and the transfer of title to McGarrahan are clearly and indisputably shown.

2. The district court of the United States for the southern district of California confirmed the grant.

3. The Attorney-General of the United States declared the title to the lands to be in Mr. McGarrahan, and caused an entry to that effect to be made on the books of his office and in the Supreme Court.

4. Hon. Caleb B. Smith, Secretary of the Interior, after examination and consideration of the case, ordered a patent to be issued to Mr. McGarrahan.

5. Mr. Usher, the successor in office of Mr. Smith, similarly decided.

6. Mr. Lincoln, after inquiry, decided the grant to be genuine, and that a patent should be issued to Mr. McGarrahan.

From the time when the district court pronounced its decree of confirmation (June 5, 1857) and the President's action on the case (in the fall of 1863), it will be observed, over six years had elapsed, and, in consequence of the lapse of time, an appeal could not be had according to law, unless something should appear to avoid the limitation.

In December, 1863, a paper, purporting to be a transcript of proceedings as they appeared on the records of the district court, was prepared in the Attorney-General's office in Washington, D. C., forwarded to the district attorney in California, certified by him out of his district, without comparison with the record and merely from memory, and from which transcript were omitted material parts of the record, and returned to Washington.

Upon the transcript thus made up the case was again brought before the Supreme Court, which being discovered by the claimant, a motion was made to strike off the appeal, which was refused, although it, as it seems to the committee, was out of time, and the transcript had been made up without reference to the actual records of the district court.

Notwithstanding the Supreme Court refused to strike off the appeal taken in the manner indicated, a new transcript was obtained, 1865, from the clerk of the district court, and filed at December term, 1865, eight years and a half after the decree of the district court confirming the title was first pronounced, and more than three years after the period had elapsed within which the law allowed an appeal to be taken in the case, unless some exception takes it out of the limitation. Upon this appeal the Supreme Court, in March, 1866, decided the case against the claimant, and thus matters now stand.

The committee have bestowed a great deal of time and labor upon this case in order to arrive at its real facts and merits. The claimant and the parties resisting his claim have been heard patiently and at great length.

In presenting the conclusion at which the committee have arrived they do not wish to be understood as undertaking to review and reverse the action of the Supreme Court relative to the case. Under and by virtue of the right of petition the claimant has presented his case to Congress, and the House of Representatives directed this committee to inquire into the grounds of his complaint. This has been done. Many facts have been presented to the committee which were not placed before the court. Additional evidence has been submitted and circumstances disclosed which have induced your committee to conclude that the relief prayed for by Mr. McGarrahan ought to be extended to him; and this may very readily be done. The title to the land claimed, and which he asks that he may be allowed to purchase, is now vested in the Government of the United States, and it is merely a question whether he shall be permitted to secure that which, in the judgment of your committee, he acquired title to by virtue of the Mexican grant aforesaid, or it shall fall into the hands of a corporation known as the New Idria Mining Company, which has been resisting his claim for years and paying the expenses of the efforts of said company out of the proceeds of the mines, the title to which rests in the United States.

It is clear that McGarrahan purchased the property in good faith, and for a valuable consideration, when it was regarded as of but little value. His interests have been attacked and his title resisted nominally by the United States, but really by the New Idria Mining Company. The name of the United States, their officers and money, have been used to resist his claim, and all to the end that this property, valuable as it now undoubtedly is, may pass into the hands of parties who are wholly unknown to the records of the proceedings had in the courts of the United States respecting the title to the land in question through all its years of transit from the board of land commissioners to and through the Supreme Court of the United States.

The company aforesaid placed before the committee a memorial, in which the case is stated as follows:

"The real parties who contested the grant were your memorialists, for against them only were the efforts of the owners of the 'Panoche Grande rancho' directed. For the New Idria mines, and for the fruits of the labor of those who have developed them, the owners of the 'Panoche Grande' are now seeking Congressional interference in their behalf. It may well be doubted whether the 'Panoche Grande' would ever have been heard of in the district court of the United States or in Congress but for the hope of robbing your memorialists of the fruits of their years of labor and vast expenditures of money."

This extract shows that the United States have no interest as between these parties beyond that of preserving its faith as pledged in the treaty made between this Government and that of Mexico. And as to the allegation of robbery, etc., made by said company, it may be remarked that one of its stockholders, of large interest, testified before the committee that after paying all of the expenses of said company, including every outlay, a balance would be left in its treasury on account stated.

The precedents are numerous where the Congress has afforded redress in cases of an analogous character. The following are referred to:

- I. The Soscot act, 12 U. S. Stats., p. 808.
- II. The Bolsa de Jomales act, 13 U. S. Stats., p. 136.
- III. Ex-Mission San José act, 13 U. S. Stats., p. 534.
- IV. Laguna de Santos Calle act, 13 U. S. Stats., p. 372.
- V. Baron de Bastrop act, 9 U. S. Stats., p. 597.

In addition to which we have the act of June 21, 1860, and the act of March 1, 1861.

In view of all the facts developed in the case and believing that justice and equity demand that the relief prayed for by the claimant be extended to him, the committee recommend the passage of the bill herewith reported.

The bill, as recommended by the committee at that time and in the above report, passed the House of Representatives in the Fortieth Congress on the 15th day of May, 1868, after debate. (See Congressional Globe, vol. 97, p. 2479.) The bill as it passed the House confirmed the grant to William McGarrahan, as surveyed by the United States surveyor-general for the State of California.

The bill, when it reached the Senate, was referred to the Committee on Private Land Claims. The committee reported adversely to the bill, and on the 25th day of July, 1868, the last evening of the session, the bill was called up and indefinitely postponed. At the next session, to wit, on the 20th day of January, 1869, Mr. Morton called up the bill for reference, which motion prevailed by a vote of 27 yeas to 18 nays, after a discussion which consumed a portion of several days, during which the circumstances under which the bill had been indefinitely postponed were fully brought to the attention of the Senate. The bill was recommitted to the Committee on Private Land Claims. It was reported back to the Senate on the 24th day of February, 1869, two of the committee being favorable, two adverse, and one refusing to take any part in the decision. The bill was not further considered during that Congress.

The existence of what is claimed to be a record of a patent in the General Land Office to McGarrahan was brought to his attention about the 6th day of July, 1870, at which time his claim was pending before the Committee on the Judiciary of the House of Representatives of the Forty-first Congress. He notified the committee of the discovery, and the committee on the 6th day of July, 1870, through its chairman, Hon. John A. Bingham, called upon the Department of the Interior for the volume of the records containing the same. The volume was produced and the record inspected by the committee. On the 14th day of July, 1870, an authenticated copy of the record was called for by the chairman of the committee. The copy was not furnished until the 26th day of July, 1870, the record in the meantime, to wit, on the 25th day of July, 1870, having, it is claimed, been mutilated.

A majority of the Committee on the Judiciary reported adversely to the claim, but the chairman of the committee, Hon. John A. Bingham, and Hon. Charles A. Eldridge, a member of the committee, reported a joint resolution providing "that the patent should be transcribed into the records as it stood, without any mutilation or erasure," and authorizing and requiring the President to do in the premises whatever was just and equitable, without regard to any action or proceeding had subsequent to the 14th day of February, 1863, the date of the patent. This joint resolution was passed by the House on the 20th day of February, 1871. It was sent to the Senate, but not considered.

The House of Representatives of the Forty-third Congress passed a resolution requesting the Commissioner of the General Land Office to institute proceedings against the New Idria Company, but the Commis-

sioner refused to bring the suit, and reported his refusal to the House. (See Ex. Doc. 180, Forty-third Congress, second session.)

The "sundry civil bill" for the year ending June 30, 1876, contained a clause authorizing the Secretary of the Interior to cause an examination to be made for the purpose of ascertaining whether any person, firm, or corporation was occupying any larger portion of said tract of land than was authorized by the laws relating to mining lands, and to make report thereof to Congress. (See Ex. Doc. 11, Forty-fourth Congress, first session.)

A majority of the Committee on the Public Lands of the House of Representatives of the Forty-fifth Congress reported a bill referring the whole case to the courts for a rehearing, without reference to any decisions of the courts previously rendered, but the bill was not acted on by the House.

A majority of the Committee on Private Land Claims of the House of Representatives of the Forty-sixth Congress reported adversely to a similar bill reported by the Committee on the Public Lands of the Forty-fifth Congress, but suggested that the decisions of the Supreme Court, adverse to the validity of this claim, are erroneous, and McGarrahan's title was originally valid; that "his only remedy" was by "direct act of Congress confirming his title to so much of said land as had not been legally disposed of by the Government, and the payment to him in money or other land of an amount equal in value to so much of the same as the Government had parted title with to innocent purchasers." (See House Report No. 29, third session, Forty-sixth Congress.) A bill was thereupon introduced in the House in accordance with this suggestion of the committee providing for the confirmation of the grant and the payment to McGarrahan of an amount in money equal to the value of so much of said grant as had been disposed of. The committee, on the 17th day of February, 1881, reported the bill favorably, with an amendment providing that compensation should be made in other land instead of money for so much of said land as the Government had parted title with; but this bill was never considered by the House. (See House Report No. 273, Forty-sixth Congress, third session.)

In the Forty-seventh Congress a similar bill was reported favorably by Mr. Muldrow, from the Committee on Private Land Claims of the House of Representatives, but it was never considered by the House.

In the Forty-eighth Congress a similar bill was considered by the Judiciary Committee of the House of Representatives and reported adversely, several members of the committee submitting views in favor of the passage of the bill, but no action was taken by the House.

There were also favorable reports upon the bill from the Committees on Mines and Mining of both the Senate and the House of Representatives in the Forty-ninth, Fiftieth, and Fifty-first Congresses, though the bill was not taken up in either House during any of the last three Congresses.

IN COURT.

Your committee, with the end in view of presenting this matter to the Senate as fully as may be convenient, begs to submit in this connection the filing of the mandate of the United States Supreme Court and final order thereon in the United States district court directing it to be carried into effect, and erasures of same from the records of the United States district court more than eight months after they were filed, as follows:

Mandate of the Supreme Court of the United States.

UNITED STATES OF AMERICA, 88:

The President of the United States of America to the honorable the judges of the district court for the southern district of California, greeting:

Whereas lately in the district court of the United States for the southern dist. of California, before you, in a cause between Vicente P. Gomez, appellant, and the United States, appellees, wherein a decree was rendered in favor of the said appellant, whereupon the said appellees prayed an appeal, which was allowed by the said district court, to remove the said cause to the Supreme Court of the United States, as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States agreeably to the act of Congress and the rules of the said Supreme Court in such case made and provided, fully and at large appears.

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-eight, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and it appearing that the appellants (the United States) have failed to have their cause filed and docketed in conformity to the rules of this court, it is now here ordered and decreed by this court that this appeal from the district court of the United States for the southern district of California be, and the same is hereby, docketed and dismissed, and that this cause be, and the same is hereby, remanded to the said district court. Jan. 31st.

You therefore are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Erased: [Filed May 4th, 1859.]

C. SIMS, *Clerk.*]

The above erasure made Jan'y 18th, 1860.

C. SIMS, *Clerk.*

In the district court of the United States for the southern district of California

VICENTE P. GOMEZ, APPELLANT, }
vs. }
THE UNITED STATES, APPELLEES. }

And now comes Vicente P. Gomez, appellant herein, and files in open court the mandate of the Supreme Court of the United States, held on the 1st day of December, 1858, and rendered herein. Whereupon it is by the court ordered, adjudged, and decreed that the said mandate be carried into effect, and that the said Gomez proceed under the decree of this court heretofore rendered as under a final decree.

This done and signed in open court this May, A. D. 1859.

Erased: [Filed May 4th, 1859.]

C. SIMS, *Clerk.*

Above erasure made January 18th, 1860.

C. SIMS, *Clerk.*

The mandate of the Supreme Court was filed in the district court below on the 4th day of May, 1859, whereupon the district court ordered, adjudged, and decreed that the said mandate be carried into effect, and that the said Gomez proceed under the decree of the district court, theretofore rendered, as under a final decree.

The effect of this judgment of dismissal of the appeal was to perfect the title to the rancho "Panoche Grande" in McGarrahan, as the grantee of Gomez, and the same having been made at the suggestion of the Attorney-General and with his knowledge and consent, after full argument had before him, should have been held to have operated as a *retraxit*, and as an estoppel upon the United States from thereafter taking a new appeal in the case.

1st. The Supreme Court has no power to review their decisions. The law points out no mode in which judgments of the Supreme Court can

be reviewed, either by the court itself or any other court, even where they have been rendered without jurisdiction. (Washington Bridge Company *vs.* Stewart, 3 Howard, 413; *Ex parte Sibald*, 12 Peters, 491.)

2d. After a mandate no rehearing will be granted. It is never done in the House of Lords. (*Ex parte Sibald*, 12 Peters, 491.)

3d. No principle is better settled or of more universal application than that no court can reverse or annul its own final judgments or decrees for errors of fact or law after the term in which they had been entered except for clerical mistakes. (3 Wheaton, 591; 3 Peters, 491.)

PATENT TO THE LAND.

We also present herewith the decision of Hon. Caleb B. Smith, Secretary of the Interior, directing the issuance of the patent to the land in controversy to Vicente P. Gomez, from whom McGarrahan derived title.

DEPARTMENT OF THE INTERIOR,
Washington, Dec. 29, 1862.

SIR: I have carefully examined the papers accompanying your communication of 29th October last, relating to the application for a patent for the "Panoche Grande" Mexican claim of Vincent Gomez, in California.

From these papers the following facts are established:

Vincent Gomez made his application before the board of land commissioners in California for the confirmation of an alleged grant by the Mexican authorities in 1844 of four square leagues of land in Monterey County, California, which grant, he alleged, was lost or destroyed at Monterey when that city was captured by the American Army.

On the 6th March, 1855, the commissioners decided that the claimant had "given satisfactory proof of the existence and loss of the grant, but has failed entirely to offer any proof whatever going to show that he ever occupied, improved, or cultivated any part or of the land, or that any person ever did for him or that he ever saw the land." The commissioners, therefore, rejected the claim as invalid.

From this decision the claimant appealed to the district court for the southern district of California.

After the appeal was taken, and before the trial of the case by the court, the Supreme Court of the United States decided that neither improvement nor occupancy was necessary to give validity to grants made by the Mexican Government before the annexation of California to the United States. *From this decision, it appears that the land commissioners found all the facts which were necessary to give validity to the claim.* Had this decision been made before the commissioners decided the case, it is evident they would have confirmed the grant.

On the 5th June, 1857, the district court for the southern district of California made an entry upon their minutes that, "being fully advised in the premises, delivered its opinion, confirming the claim of the appellants to the extent called for in the transcript and papers—three leagues or *sitios de ganada*, and a decree was ordered to be entered up in conformity to said opinion."

No formal decree was signed and entered upon the records at that term; but, on the 5th of February, 1858, at the next term of the court, a full and final decree was signed by the court, and entered upon the records, which described the land by boundaries, and decreed that the decision of the land commissioners was reversed, "and that the claim of said appellant is good and valid, and the same is here confirmed to him." The decree also recited that the claim had been confirmed on the 5th June, 1857, by the court at a regular term, but it had been omitted by the court to sign the decree at the time it was made.

It was therefore ordered that the decree be signed "now as for then." This was a decree *nunc pro tunc*, and had relation back to the time when the order of confirmation was made by the court.

On the 21st March, 1861, several regular terms of the court having intervened, the court made an order setting aside all previous proceedings in the case, and placing the same on the calendar for trial *de nova*. On the 4th day of August, 1862, the court, at a regular term, made an order vacating the previous order granting a new trial, and ordering that it "be and the same is hereby vacated and set aside." These several decrees and orders constitute a confirmation by the court of the grant of the claimant, and entitle him to a patent, unless it shall be apparent that some proceed-

ings have been instituted on behalf of the United States, by way of appeal or otherwise, which will require a review or re-examination of the case.

The case was docketed in the Supreme Court, at the December term, 1858, as an appeal from the district court of California, and the appeal was dismissed on the motion of the appellee, and a mandate granted to the district court to execute the decree of confirmation. At the December term, 1859, on motion of the Attorney-General, the order dismissing the appeal was vacated, and the mandate was recalled. The effect of this order was to leave the case as though no appeal had been taken, and to authorize an appeal on behalf of the United States.

No appeal appears to have been subsequently taken until the 25th of August last, when an order for an appeal to the Supreme Court of the United States was made by the district court of California. On the 4th of the present month the district court vacated the order allowing the appeal and set aside the motion of the district attorney asking leave, on behalf of the United States, to take an appeal to the Supreme Court from the final decree of confirmation, and denied the same.

This proceeding appears to me to be final and conclusive in the case. The time within which by law an appeal may be taken has elapsed, and the decree of confirmation made by the district court, therefore, fixes and determines the rights of the claimant.

It appears, from the opinion of the Supreme Court of the United States before referred to, that the district attorney who represented the United States when the decree of confirmation was made was interested in the claim at that time, and it is alleged that he fraudulently assented to the decree. Questions of fraud, which have been raised in the case, cannot be examined or determined by this Department.

The only questions to be considered are, has the grant been confirmed by the decree of the proper court, and are there any legal proceedings pending to reverse or set aside that decree? Upon both of these questions, it appears to me, the answer must be in favor of the claimant.

The act of 14th June, 1860, which requires the surveyor-general to publish for a given time the fact of the survey, with a view of affording to persons interested an opportunity to contest the boundaries fixed by the survey, is directory to that officer. The law directs this proceeding before the survey shall be reported to the General Land Office. The survey having been reported in this case, the presumption arises that the surveyor-general has performed all the prerequisite duties enjoined by the law.

Besides, by the law of June 2d, 1862, the proper officers are required to survey such grants upon the application of the claimants, they paying or securing the expense, and such survey is declared to be but *prima facie* evidence of the true location of the land claimed or granted. Of course, it is the duty of the surveyor-general to report such survey to the General Land Office, which has been done in this case. The survey is but *prima facie* evidence of the true location, and a patent will be put *prima facie* evidence of title.

No notice has been presented of any conflicting claim, and, should such arise, the parties can not be precluded by a patent.

The order of Secretary Thompson against the issue of a patent in this case, based upon the letter of Attorney-General Black, was founded upon the assumption that further proceedings would be instituted to reverse the decree of confirmation of the district court. No such proceedings are now pending, and the time within which any further appeal can be presented has elapsed.

My conclusion is that the decree of the district court for the southern district of California, confirming the grant, has become final. The United States has no longer any interest in the controversy. No claim of third parties has been interposed. The suggestion of fraud in the grant, or in the manner of procuring its confirmation, are res adjudicata, and I am unable to discover any reason why a patent should not be issued in conformity with the decree of the court and the survey.

You will therefore issue a patent for the land in accordance with the survey, as reported by the surveyor-general.

The papers pertaining to the case are herewith returned to your office.

Very respectfully, your ob't serv't,

CALEB B. SMITH,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

This decision presents another point of view from which McGarrahan's case should be considered. It is shown that the Secretary of the Interior, Hon. Caleb B. Smith, rendered a decision in favor of McGarrahan's title to the lands on the 29th day of December, 1862. The case came regularly before the Secretary for consideration, and it cannot be disputed that when the law has confided to a special tribunal

the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others. (Johnson vs. Towsley, 13 Wall., 83, 84, and authorities there cited.)

Upon well-understood principles, a power confided to a special tribunal can neither be reviewed, nor enforced, nor reversed by courts of law or equity, as between the Government and those seeking to become purchasers or grantees. The final action of the Land Office has always been regarded as final by the judiciary. Its decisions, whether rightful or wrongful, have never been reviewed, either to enforce sale by mandamus or prevent it by injunction. (Hot Springs case, 10 Court of Claims R., 362.)

The Secretary of the Interior directed that a patent be issued to McGarrahan, and, as is hereinbefore shown, the patent was subsequently made out and recorded. McGarrahan, however, it appears, did not acquire knowledge of the record of the patent, showing an executed patent, until about the 6th day of July, 1870. Had McGarrahan known of the existence of this record at the time of the final hearing of the case in the Supreme Court, in 1866, so that the attention of the court could have been directed to it, the patent being based upon the decision of the Secretary of the Interior, Mr. Smith, affirmed by his successor, Mr. Usher, the court would have in all probability held that to have been a final and conclusive disposition of the controversy, especially in view of the further fact that upon the withholding of the patent President Lincoln, after a full hearing of the case upon printed briefs and oral argument, had directed its delivery to McGarrahan.

Mr. Smith retired from office a few days after rendering his decision as above quoted, and was succeeded by Hon. J. P. Usher, who upon finding that the then Commissioner of the General Land Office had refused to issue a patent in accordance with Mr. Smith's decision, reiterated that decision as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 4, 1863.

SIR: I have considered your communication of the 3d of January, 1863, relative to the issuing of a patent for the Panoche Grande claim in California.

My predecessor having determined that the title was in the grantee named in the grant, the only question for my decision is whether a patent shall issue upon a survey returned by the surveyor-general, made under the act of June 2, 1862. The view which I have taken of that act is that it modifies the acts of March 3, 1851, and of June 14, 1860, so far as to allow the survey to be made at the instance of the party claiming the land, and making that survey only *prima facie* evidence of the true location of the land claimed.

If the survey had been made under the acts of March 3, 1851, and June 14, 1860, and advertisements had been made and all things done in pursuance of the last-named act, the acts of the surveyor (if the same had remained, without having been caused by an interested party to be certified to the court), or the adjudication of the court, if the same had been so certified, would have been conclusive as to the *locus* fixed by the survey. Whereas the act of June 2, 1862, makes the survey made under that act *prima facie* evidence only of the true location of the land claimed or granted, and as the survey was necessarily made under that act, I am of the opinion that the latter act modifies the former acts in this particular only, and that they are in force so far as they direct patents to be issued.

I think, therefore, that the decision of my predecessor, directing the patent, was correct, and that it should issue. I would advise you, however, to cause to be inserted in the patent, by way of recital, the fact that it was issued upon a survey made under the act of June 2, 1862, and also, by way of greater caution, to insert a provision that the description of the land therein conveyed was to be taken against the United States, or any person making claim to the land, as *prima facie* evidence only of the true location of the land granted, and to be modified or avoided in that respect if the same should be found to be erroneous.

Respecting the payment of the surveyor for the survey, I think it may be fairly presumed that his fees have been paid, or he would not have returned the survey. To strengthen this presumption, two certificates of the assistant treasurer of the

United States at San Francisco, number 3, one of \$545 and the other of \$55, have been deposited with me by the claimants, which, with the papers, are returned to you. The sums mentioned in these certificates it is alleged by the claimants, and I may fairly presume, were deposited for this survey.

Very respectfully, your obedient servant,

J. P. UPSHUR, *Secretary.*

Hon. J. M. EDMUNDS,
Commissioner of the General Land Office.

In accordance with the above decisions the patent was executed and recorded on the 14th day of March, 1863, in vol. 4, pp. 312 and 321, inclusive, and is as follows:

Patent.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Whereas it appears from a duly authenticated transcript, filed in the General Land Office of the United States, that pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California," Vicente P. Gomez, as claimant, filed his petition on the ninth day of February, 1853, with the Commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in which petition he claimed the confirmation of his title to a tract of land called Panoche Grande, of the extent of four square leagues, situated in the county of San Joaquin, and State aforesaid; said claim being founded on a Mexican grant to the petitioner, made in the year 1844, by Manuel Micheltorena, then governor of Upper California;

And whereas the Board of Land Commissioners aforesaid, on the 6th day of March, 1855, rendered a decision rejecting said claim, which decree or decision was, on appeal, reversed by the district court of the United States for the southern district of California, by decree rendered as follows:

"Vicente P. Gomez, appellant, *vs.* The United States, appellee; case No. 393, 'Panoche Grande.' Transcript No. 569. Decree. This cause came on to be heard on appeal from the decision of the United States Board of Land Commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3, 1851, on a transcript of the decision and proceedings of said board, and the papers and evidence upon which said decision was made, and the other evidence adduced by the appellant before this court, and it appearing to the court that said transcript and notice of intention to appeal have been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of said Board of Land Commissioners be, and the same is hereby, reversed; and that the claim of said appellant is good and valid; and the same is hereby confirmed to him as follows, to wit: The tract of land situate in the county of Fresno, State of California, known by the name of 'Panoche Grande,' bounded northerly by the lands of Don Julian Ursua, southerly by the hills, easterly by the valley of the Tulare, and westerly by the lands of Don Francisco Arias, containing four square leagues of land and no more, provided that quantity is contained within the boundaries aforesaid, and provided also that if a less quantity is contained within the boundaries aforesaid, that confirmation of such less quantity is hereby made to said claimant, and for a more particular description of which said land reference is hereby made to the map contained in the transcript in this case.

"And it also appearing to this court that heretofore, to wit, on the 5th day of June, A. D. 1857, at a regular term of this court holden in the town of Monterey, State of California, the claim of the appellant in this case had been confirmed by this court, but that it had been omitted by this court to sign the decree of confirmation at the time the same was made: It is therefore further ordered by this court that the same be signed now as for them.

"Given under my hand in open court this 5th day of February, A. D. 1858.

"ISAAC S. K. OGIER,

"*U. S. Dist. Judge for the S. Dist. of Cal.*"

And whereas it further appears from a duly certified extract on file in the General Land Office, from the minutes of the Supreme Court of the United States, that this cause being brought by appeal before the said court at the December term, 1858, the following proceedings were had therein: "Now on this day this cause coming on to

be heard, the parties appearing by their respective attorneys, the appellant by Sloan & Hartman, esqs., and the appellees by P. Ord, U. S. dist. atty., and after argument of counsel aforesaid, the same is submitted to court for final adjudication. Whereupon the court, being fully advised in the premises, delivered its opinion confirming the claim of the appellant to the extent called for in the transcript and papers, three leagues or sitios de gañada major, and a decree was ordered to be entered up in conformity with said opinion; and thereafter, to wit, at the December term, 1859, of the Supreme Court of the United States, the following order was made in this case: "The United States, app'ts, *vs.* Vicente P. Gomez. Appeal from the district court of the United States for the southern district of California."

"On consideration of the motion made in this cause on a prior day of the present term, to-wit, on Friday, the 27th day of January, A. D. 1860, by Mr. Attorney-General Black, to rescind the order and decree of this court of the 31st day of January, 1859, docketing and dismissing this appeal, and to revoke and cancel the mandate issued by this court to the district court of the United States for the southern district of California, and of the argument of counsel thereupon had as well in support of as against the said motion; it is now here ordered by this court that the aforesaid decree of this court docketing and dismissing this appeal be, and the same is hereby, rescinded and annulled, and that the mandate issued by this court to the district court of the United States for the southern district of California in this case be, and the same is hereby, revoked and canceled; and it is further ordered by this court that the clerk of this court do forthwith send a certified copy of this order to the aforesaid district court of the United States for the southern district of California."

And whereas it further appears from a duly-certified transcript on file in the General Land Office, that an order having been made in the district court of the United States for the southern district of California, granting a new trial in this case, the said court, on the 4th day of August, 1862, on a motion to vacate and set aside said order, made the following order: "Vicente P. Gomez, appellant, *vs.* The United States, appellee, D. C. No. 393, L. C. No. 569. 'Panoche Grande.' On this day the court delivers its opinion in this case, granting the motion heretofore made by the appellant herein, praying the court to vacate and set aside the order of Hon. Isaac S. K. Ogier, late judge, granting a new trial in this cause. And it is hereby ordered that the previous order of this court made and entered on the 21st day of March, 1861, setting aside all proceedings had in this cause, and placing the same on the calendar for trial *de novo*, be and the same is hereby, vacated and set aside."

And whereas it further appears from a duly certified transcript on file in the General Land Office of the United States that an order having been made on the 25th day of August, 1862, in the district court aforesaid, allowing appeal in this case to the Supreme Court of the United States, the said district court, at the December term, 1862, made the following order: "Vicente P. Gomez *vs.* The United States, No. 393, Panoche Grande. In this case the court delivered an opinion on the motion submitted the day before yesterday, and ordered that the appeal taken on the twenty-fifth day of August, A. D. 1862, by the United States to the Supreme Court of the United States from the final decree of confirmation herein be vacated and set aside, and it is further ordered that the order of this court made on the said 25th day of August, A. D. 1862, allowing said appeal be, and the same is, vacated and set aside, and the motion of the United States district attorney for leave to take an appeal on behalf of the United States to the Supreme Court of the United States from the said final decree be, and the same is, denied."

And whereas there has been presented to the Commissioner of the General Land Office a plat, with a certificate of the survey of the said claim, authenticated by the signature of the surveyor-general of the public lands in California, said survey having been made pursuant to the act of Congress approved June 2, 1862, entitled "An act for the survey of grants or claims of land," said plat and certificate being in the words and figures following, to wit:

"UNITED STATES SURVEYOR-GENERAL'S OFFICE,
"San Francisco, California.

"Under and by virtue of the provisions of the act of Congress of the 2d of June, 1862, entitled 'An act for the survey of grants or claims of land,' and in consequence of a certificate of the United States district court for the southern district of California, a copy of which is hereto annexed, by which it appears that a decision of the said District Court has been had, recognizing and confirming the title claim of Vicente P. Gomez to the tract of land designated 'Panoche Grande,' the said tract has been surveyed in conformity with said decision, and I hereby certify the annexed map to be a true and accurate plat of said tract of land as appears by the field-notes of the survey thereof made by E. H. Dyer, Deputy Surveyor, in the month of July, 1862, under the direction of this office, which, having been examined and approved, are now on file therein.

"And I hereby certify that the said tract of land is bounded and described as follows, to wit:

"Beginning at post in earth mound, corner to sections one, two, eleven, and twelve, township seventeen south, range eleven east of Mount Diablo meridian, from which post a point on the highest ridge of the Lomas Muertas (a high range of barren and broken mountains, the eastern slope of which forms the western edge of Tulare Valley) bears north nine degrees west, distance about two miles.

"Thence according to the true meridian, the variation of the magnetic needle being fifteen degrees thirty minutes east, over rolling land to the north of a small valley called Vallecito, north forty chains to post in earth mound on quarter-section corner between sections one and two. Station.

"Thence west eighty chains to quarter-section corner on line between sections two and three. Station.

"Thence north forty chains to post in earth-mound corner to sections two and three on fourth standard line south. Station.

"Thence west at forty chains quarter-section post in earth mound eighty chains to post in earth-mound corner to sections three and four on fourth standard line south. Station.

"Thence through township sixteen south, range eleven east, north forty chains to station.

"Thence through middle of sections thirty-three and thirty-two west one hundred chains to station.

"Thence south at forty chains intersects fourth standard line south twenty chains west of post corner to sections four and five; thence with a variation of fifteen degrees thirty-five minutes east through township seventeen south, range eleven east, parallel to its eastern boundary; at sixty chains enters Vallecito Valley, course northwest and south of east one hundred chains to station.

"Thence east twenty chains to station on line between sections four and five, thence south at thirty chains leaves small valley, thence over broken hills near southern edge of said valley sixty chains to quarter-section corner between sections eight and nine. Station.

"Thence east eighty chains to quarter-section corner between sections nine and ten. Station.

"Thence south forty chains to corner to sections nine, ten, fifteen and sixteen. Station.

"Thence east one hundred and twenty chains to quarter-section corner between sections eleven and fourteen. Station.

"Thence through section fourteen south sixty chains to station.

"Thence east twenty chains to station.

"Thence south twenty chains to station on line between sections fourteen and twenty-three.

"Thence on section line east sixty chains to quarter-section corner on line between sections thirteen and twenty-four. Station.

"Thence through middle of sections twenty-four, twenty-five, and thirty-six, over high and rough mountains, south two hundred chains to center of section thirty-six. Station.

"Thence east at forty chains quarter-section post in earth mound on line between ranges eleven and twelve east; thence through township seventeen south, range twelve east, eighty-two chains and fifteen links to center of section thirty-one. Station.

"Thence south at forty chains quarter-section post in mound on line between townships seventeen and eighteen south, sections thirty-one and six, on top of a ridge course northwest and southeast, thence through township eighteen south, range twelve east, two hundred and eighty chains to quarter-section corner between sections eighteen and nineteen. Station.

"Thence on section line west twenty chains to station.

"Thence through section nineteen south sixty chains to station.

"Thence east twenty chains to station.

"Thence south twenty chains to quarter-section corner between sections nineteen and thirty. Station.

"Thence on section line east sixty chains to station.

"Thence through section twenty north sixty chains to station.

"Thence east twenty chains to station.

"Thence north twenty chains to quarter-section corner between sections seventeen and twenty. Station.

"Thence on section line east twenty chains to station.

"Thence through section seventeen north forty chains to station.

"Thence east twenty chains to quarter-section corner between sections sixteen and seventeen. Station.

"Thence on section-line north eighty chains to quarter-section corner between sections eight and nine. Station.

"Thence through section nine east forty chains to center of section nine, from which the Panoche Grande Peake bears south fifty-six degrees east, distant about seventy chains. Station.

"Thence north at forty chains quarter-section post in rock mound on line between sections four and nine, from which a pine tree bears north fifty-two degrees east, distant twenty-four links, another pine tree bears south fifteen degrees west, distant nineteen links, and the San Carlos Peak in the northeast quarter of section four bears north twenty-two degrees east; thence through section four, at fifty-four chains and fifty links, across Arroyo Panoche Grande, course northwest sixty chains to station.

"Thence east twenty chains to station.

"Thence north twenty chains to station.

"Thence east twenty chains to quarter-section post in earth mound on line between sections three and four. Station.

"Thence on section line, with a variation of fifteen degrees fourteen minutes east, north; at forty chains and forty links intersects line between township seventeen and eighteen south, range 12 east, at post in the earth-mound corner to section three, four, thirty-three, and thirty-four; thence through township seventeen south, range twelve east, over high and broken mountains, with a variation of fifteen degrees thirty-eight minutes east, eighty chains and forty links to quarter-section post in earth mound between sections thirty-three and thirty-four. Station.

"Thence through section thirty-three, with a variation of fifteen degrees twenty-seven minutes east, west forty chains to center of section thirty-three, from which a marked cedar tree, eight inches diameter, bears west, distant forty chains. Station.

"Thence through middle of sections, with a variation of fifteen degrees thirty-eight minutes east, north of forty chains post in earth mound at quarter-section corner between sections twenty-eight and thirty-three one hundred and twenty chains to post in earth mound at quarter-section corner between sections twenty-one and twenty-eight two hundred chains to a sandstone twelve inches long, ten inches wide, and eight inches thick, in a rock mound in deep rocky gulch, from which a steep rock cliff bears north forty-five degree east; said sandstone is set for quarter-section corner between sections sixteen and twenty-one; thence over alkali hills two hundred and eighty chains to quarter-section post in a mound of alkali soil between sections nine and sixteen. Station.

"Thence, with a variation of fifteen degrees fifty-nine minutes east, west forty chains to a post in mound of alkali soil, corner to sections eight, nine, sixteen, and seventeen. Station.

"Thence on section line, with a variation of fifteen degrees thirty-eight minutes east, north forty chains to quarter-section post in mound of alkali earth. Station.

"Thence through section eight, within a variation of fifteen degrees fifty minutes east, west forty chains to center of section eight. Station.

"Thence with a variation of fifteen degrees thirty-eight minutes east, north forty chains to a sandstone rock twelve inches long, ten inches wide, and eight inches thick in mound of alkali earth, quarter-section corner on line between sections five and eight. Station.

"Thence on section line with a variation of fifteen degrees fifty-four minutes east, west at thirty chains thirty-eight links enters the narrow valley of the Arroyo Panoche Grande, at thirty-nine chains eighty-eight links across Arroyo Panoche Grande fifty links wide, course north ten degrees east; thence over low hills forty chains and thirty-eight links to post in mound at corner to sections five, six, seven, and eight; thence on section line, with a variation of fifteen degrees thirty minutes east, eighty chains and thirty-eight links to quarter-section post in earth mound, one hundred and twenty chains and thirty-eight links to post in earth mound at corner to sections one, six, seven, and twelve, on line between ranges eleven and twelve east; thence through range eleven east one hundred and sixty chains and thirty-eight links to quarter-section post in mound two hundred chains and thirty-eight links to point of beginning, containing seventeen thousand seven hundred and sixty-eight and seventy-seven one-hundredths acres, and being designated in the plot of public surveys as lot number thirty-seven, township sixteen south, range eleven east; lot number thirty-seven, township seventeen south, range eleven east; lot number thirty-seven, township seventeen south, range twelve east; and lot number thirty-seven, township eighteen south, range eleven east, all of Mount Diablo meridian.

"In witness whereof I have hereunto signed my name officially, and caused [SEAL.] the seal of my office to be attached, at the city of San Francisco, this eleventh day of September, one thousand eight hundred and sixty-two.

"E. F. BEALE,

"U. S. Surveyor-General, California."

And whereas, application having been made for the issue of a patent upon the foregoing survey, the Secretary of the Interior, under date of 29th December, 1862, rendered

his decision, in which, upon recital in substance of the proceedings had in the matter and review, it is held as follows: that "the decree of the district court for the southern district of California, confirming the grant, has become final;" that "the United States has no longer any interest in the controversy;" that "no claim of third parties has been interposed;" that "the suggestions of fraud in the grant, or in the manner of procuring its confirmation, are *res adjudicata*," and he is "unable to discover any reasons why a patent should not be issued in conformity with the decree of the court and the survey," and ordered the issue of "a patent for the land in accordance with the survey as reported by the surveyor-general."

Now know ye, that the United States of America, in consideration of the premises, and pursuant to the provisions of the acts of Congress and decisions aforesaid, have given and granted, and by these presents do give and grant unto the said Vicente P. Gomez, and to his heirs, the tract of land embraced and described in the foregoing survey, with the stipulation that said survey under the aforesaid act of June 2d, 1862, shall "be taken as *prima facie* evidence only of the true location of the land granted," and with the further stipulation that, in virtue of the 15th section of the said act of March 3d, 1851, the confirmation of this said claim and this patent "shall not affect the interest of third persons."

To have and to hold the said tract, with the appurtenances, unto the said Vicente P. Gomez, and to his heirs and assigns forever, with the stipulations aforesaid.

In testimony whereof, I, Abraham Lincoln, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this fourteenth day of [SEAL] March, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States the eighty-seventh.

By the President:

ABRAHAM LINCOLN.

By W. O. STODDARD, *Secretary,*
Acting Recorder of the General Land Office.

In conclusion, your committee begs to adopt as its own the summing up of this matter as presented to the Senate in the Fiftieth Congress in the report of the Committee on Mines and Mining, and which is as follows:

Your committee has given this matter a great deal of consideration. The claim when first presented to Congress was carefully considered by the law committee of the House, and, as has been stated, that committee reported a bill confirming the title to the land in controversy to McGarrahan, and the House passed the bill. The reasons which led the committee to the conclusions which it reached are stated in the report with great clearness and force. The House of Representatives of the Forty-first Congress passed the joint resolution before referred to, which virtually gave effect to the patent, notwithstanding the adverse decision of the Supreme Court, after a protracted debate. Your committee, in view of the action taken at different times by the two houses of Congress and their committees, and also in view of the decisions of the Departments and the different decisions of the courts, as above recited, have thought it best to refer the question of the validity of the grant again to the courts, to be acted on without regard to any former decision. It has likewise referred to the courts the question of indemnity to McGarrahan, in case it is decided that the grant is valid. The bill provides that all evidence taken before the land commissioners, or before a court of the circuit or district court of the United States in California, or before the committees of the two houses of Congress, and before persons authorized by law to administer oaths, shall be competent testimony on the trial. It appears that in January, 1881, and subsequently the United States parted with the title to certain portions of the land embracing the New Idria quicksilver mine to the New Idria Mining Company. If there was a grant of this land to Gomez, protected by the treaty of Guadalupe Hidalgo, and the courts so find under the provisions of the bill reported by your committee, then the question of the liability of the Government, in law or equity, to indemnify said McGarrahan for any portion of the lands disposed of by it is submitted to the court.

Your committee, in order that there may be a final determination of this case, recommend the passage of Senate bill 1958 with amendments as specified.

Your committee recommend that the bill be amended as follows:

In line 3, section 1, after the word "papers" insert the following: "or copies thereof."

In line 8 of said section, after the word "of," insert "Private Land," and after the word "claims," in said line, insert "established by an act of Congress approved March 3, 1891."

In line 9 strike out the words "of Claims."

In line 11, after the word "determine," insert "and adjudicate."

In line 12, after the word "grant," insert "and to render final judgment thereon."

In line 13, after the word "same," insert "shall, for the purposes of this act, hold such sessions as may be necessary at the city of Washington, in the District of Columbia, and."

In line 18, after the word "California," insert "which had power and jurisdiction."

In line 21, before the word "to," insert "entitled an act."

In line 22, before the word "California," insert "the State of."

In line 25 strike out the word "having" and insert "claiming to have."

In line 30 strike out the words "of Claims" and insert after the word "grant" the words "and judgment thereon."

In line 35 strike out the words "of Claims."

In line 37 strike out the words "of Claims."

In section 2, line 2, before the word "court," insert the word "said."

In line 3 strike out the words "of Claims."

In line 6, of section 2, after the word "same," insert "or a copy thereof."

In line 14, after the word "any," insert "map or."

In line 16, after the word "the," insert "aforesaid boundaries set forth in said expediente and the."

In line 19 strike out "copy" and insert "copies."

In line 22, after the word "lands," insert "in any of the departments of the Government."

In line 24 of said section 2 insert, after "secretary," "authorized."

In line 26, after the word "thereto," insert "and other lawful evidence concerning the rights of the parties before the court."

In line 1 of section 3 strike out "of claims" and insert, after the word "find," "and adjudge."

In line 7 strike out the words "of Claims."

In line 8, before the word "to," insert "and judgment."

In line 11, after the word "boundaries," insert "except as hereinafter provided."

In line 16, after the word "Interior," insert "December 29, 1862."

In line 19, after the word "boundaries," insert "*Provided.*"

In line 20 strike out the words "of Claims."

In line 23, before the word "shall," insert "and judgment."

In line 30 strike out the words "of Claims."

Amend section 4 by striking out the word "that" in first line, and inserting the following: "If the court shall adjudge in favor of said William McGarrahan, as provided in section 3."

In line 3, after the word "disposed," insert "by the United States."

In line 7 insert the word "said" before the word "court" and strike out "of Claims."

In lines 11 and 17 strike out the words "of Claims."

In section 5 strike out all down to and including the word "*Provided,*" in line 15.

In line 18 strike out "ninety days" and insert "six months."

In line 20 of said section 5 insert the following after the word "States:": "*Provided further.*"

In lines 22 and 23 strike out the words "or any successor to his

rights" and the words "the person entitled to receive the same" and insert "he" before the word "shall."

In section 6 strike out all of lines 1, 2, 3, and 4, and all of line 5 to the word "may," and insert before said word the following: "The foregoing proceeding."

In line 7, after the word "statute," insert "heretofore enacted," and after "decision" insert the words "heretofore made."

Amend the title so as to read: "A bill to submit to the Court of Private Land Claims the title of William McGarrahan to the rancho Panoche Grande, in the State of California, and for other purposes."

And that as amended the bill do pass.

Your committee add hereto a letter from the Assistant Commissioner of the General Land Office with an abstract of entries made within the limits of said grant; also a letter from the Acting Commissioner of the General Land Office of January 25, 1888, concerning said entries; also a letter from Mr. McGarrahan and his counsel, the Hon. Eppa Hunton; also an additional letter from Mr. McGarrahan, and also an extract from the report made from the Judiciary Committee of the House of Representatives of the Forty-eighth Congress by Hon. Patrick Collins, Hon. William C. Maybury, and Hon. H. Bisbee, jr., also a copy of a joint resolution that passed the House of Representatives February 23, 1891, all of which are made a part of this report, and are attached as exhibits A, B, C, D, E, F, and G.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 5, 1888.

SIR: In response to your inquiry of this date I have the honor to transmit herewith an abstract of entries made within the claimed limits of the private grant known as the Panoche Grande, showing the names of the entrymen and the nature and area of the entries.

Very respectfully,

T. J. ANDERSON,
Assistant Commissioner.

Hon. H. M. TELLER,
United States Senate.

EXHIBIT B.

Township No. —, —, Range No. —, District of —.

Description of tract.			Contents.	Rate per acre.	Purchase money.	Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	Remarks.
Part of section.	Section.	Township south.	Range east.						
Homestead, E. $\frac{1}{4}$ SE. $\frac{1}{4}$...	33	16	11	Acres. 80	\$2.50	John Baptiste Friand...	June 3, 1881	4430	Final certificate No. 1665, Sept. 5, 1881.
Pre. cash, S. $\frac{1}{4}$ SE. $\frac{1}{4}$ and S. $\frac{1}{4}$ SW. $\frac{1}{4}$...	2	17	11				Nov. 27, 1883	9638	
Home., NW. $\frac{1}{4}$...	4	17	11	160		Wm. Ashurst...	July 11, 1881	4494	F. C. 2760, March 15, 1886.
Home., SE. $\frac{1}{4}$...	4	17	11	160			Sept. 11, 1882	5023	
Pre. cash, N. $\frac{1}{4}$ SW. $\frac{1}{4}$...	4	17	11	80					
Pre. cash, S. $\frac{1}{4}$ SW. $\frac{1}{4}$...	4	17	11	80					Located with bounty land wt. 66556, act 1855; 160 acres, David Dixon, Sept. 27 1878; R. & R., No. 1888. Located with bounty land wt. 51832, act 1855; 160 acres, David Dixon, Sept. 27, 1878; R. & R., No. 1889.
Timber culture: E. $\frac{1}{4}$ NE. $\frac{1}{4}$ and N. $\frac{1}{4}$ SE. $\frac{1}{4}$...	10	17	11	160		Wm. Ashurst...	Apr. 7, 1886	362	Selected by State, Sept. 17, 1881, in lieu of SW. $\frac{1}{4}$ sec. 16, 3 S., 1 E., M. D. M., R. & R., 3956 & 3955; app'd May 29, 1883. List 49.
S. $\frac{1}{4}$ SE. $\frac{1}{4}$ and S. $\frac{1}{4}$ SW. $\frac{1}{4}$...	10	17	11	160					Selected by State, April 1, 1881, in lieu of SW. $\frac{1}{4}$ sec. 36, 16 S., 4 E., M. D. M., R. & R., 3918; app'd Nov. 16, 1882. List 48.
S. $\frac{1}{4}$ SE. $\frac{1}{4}$ and S. $\frac{1}{4}$ SW. $\frac{1}{4}$...	12	17	11	160					Located Aug. 10, 1872, Ramon F. Careaga, Agricultural College scrip 693, act July 2, 1862, R. & R., 1113.
Pre. cash: NE. $\frac{1}{4}$...	14	17	11	160					Selected by State, May 2, 1881, in lieu of N. $\frac{1}{4}$ NW. $\frac{1}{4}$ sec. 16 S., 4 E., M. D. M., and S. $\frac{1}{4}$ NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ sec. 16, 7 N., 32 W., S. B. M., R. & R., 3935; app'd Nov. 16, 1882. List 48.
Excess W. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{4}$ NW. $\frac{1}{4}$, and NE. $\frac{1}{4}$ SW. $\frac{1}{4}$...	14 14	17 17	11 11	160 200	1.25	Ramon F. Careaga...	Aug. 10, 1872	3727	
Home., lots 1 and 2...	24	17	11	88.18		Domingo Ortiz...	May 27, 1884	6099	F. C. 3017, June 13, 1887.
Home., SE. $\frac{1}{4}$...	7	17	12	160		Refugio L. Valdez	Nov. 29, 1886	8231	Located bounty land wt. 17830, act 1847; 160 acres, Refugio Llamas Valdes, Sept. 27, 1878, R. & R., 119.
Pre. cash: N. $\frac{1}{4}$ NW. $\frac{1}{4}$...	8	17	12	80					

Township No. —, —, —, Range No. —, District of — — Continued.

Description of tract.				Contents.	Rate per acre.	Purchase money.	Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	Remarks.
Part of section.	Section.	Township south.	Range east.							
Pre. cash—Continued. S. $\frac{1}{2}$ NW. $\frac{1}{4}$	8	17	12	Aces. 80						Located bounty land wt. 80081, act 1847; 160 acres, Refugio Llamas Valdes, Sept. 27, 1878, R. & R., 120.
Home. lots 3, 4, and 6.... Lots 2, 3, 4, 5, 6, 7, 8, 13, and 14.	17 18	17 17	12 12	142.54 319.01			Rosario Mercinda.....	June 16, 1887	8752	Selected by State, Oct. 28, 1881, in lieu of SW. $\frac{1}{4}$ sec. 16, 16 S., 4 E.; NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 16, 22 S., 7 E.; NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ sec. 16, 1 S., 6 W.; and N. $\frac{1}{4}$ NW. $\frac{1}{4}$ sec. 16, 16 S., 1 E.; M. D. M., R. & R., 3963; app'd Nov. 16, 1882. List 48.
N. $\frac{1}{2}$ SW. $\frac{1}{4}$	28	17	12	80						Selected by State, April 6, 1881, under acts July 2, 1862, June 8, 1868, and March 3, 1871, R. & R., No. 157, double minimum; app'd February 9, 1883. List 9.
Excess				80	\$1.25	\$100.00	University of California.	Oct. 4, 1883	9425	
Mineral lot:										
38.....	32	17	12	20.66	5.00	105.00	New Idria Mining Co....	Dec. 11, 1879	77	
42.....	4	18	12	20.66	5.00	105.00	do	July 28, 1881	80	
43.....	4	18	12	20.66	5.00	105.00	do	do	81	
44.....	4	18	12	20.66	5.00	105.00	do	do	82	
38 of 13, 18 S., 11 E., and 39 of sec's 7, 18, and 19.		18	12	252.97	5.00	1,265.00	Jas. P. Sargent <i>et al.</i>	Dec. 12, 1873	22	
38 in sec's 17, 18, 19, and 20.		18	12	139.07	5.00	700.00	do	do	21	

EXHIBIT C.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 25, 1888.

SIR: In response to your inquiry of the 21st instant, relative to the amount of land which has been disposed of within the claimed limits of the private grant known as the "Panoche Grande," in the San Francisco, Cal., land district, I have the honor to state that upon examination of the records of this office I find that 2,673.71 acres have been disposed of within the limits of said claim, which covers land in townships 16 and 17 south, range 11 east, and townships 17 and 18 south, range 12 east, Mount Diablo meridian.

The copy of Senate bill No. 1030, handed to me by you, is herewith returned.

Very respectfully,

Hon. H. M. TELLER,
U. S. Senate.

S. M. STOCKSLAGER,
Acting Commissioner.

EXHIBIT D.

WASHINGTON, April 16, 1888.

DEAR SIR: Senator Voorhees, on December 31, 1887, presented a bill for the relief of William McGarrahan, which was referred to the Committee on Mines and Mining, of which you are a member.

A bill of a similar character was favorably reported by the Senate and House Committees on Mines and Mining of the Forty-ninth Congress, but was not reached on the Calendar of either House, and, of course, not considered.

A majority of the Committee on Mines and Mining of the House of Representatives, through its chairman, Mr. O'Ferrall, also reported a bill for McGarrahan's relief at this present session, which is now on the Calendar of the House.

The Committee on Private Land Claims of the House of Representatives, 17th February, 1881, Forty-sixth Congress, reported a bill confirming the grant to McGarrahan, *without further litigation*, and recommended that he should be indemnified in other lands, but it was never considered by the House. (See House Report No. 273, Forty-sixth Congress.)

In the Forty-seventh Congress a similar bill was reported favorably by Mr. Muldrow, the present First Assistant Secretary of the Interior, from the Committee on Private Land Claims of the House of Representatives, but it was never considered by the House.

Since the reference of this bill to your committee there has been incorporated therein three amendments, thereby removing objections, as it is believed, of some of the members of the committee and those opposing its passage in its original form.

Senator Teller, on behalf of the committee and for its information, as I understand, made a personal application to the Hon. S. M. Stockslager, Acting Commissioner of the Land Office, to ascertain "the amount of land which has been disposed of within the limits of the private grant known as the Panoche Grande, Cal."

The Acting Commissioner, of date January 25, 1888, in reply, says: "That upon examination of the records of this office I find that 2,673.71 acres have been disposed of within the limits of said claim." (See letter addressed to Senator Teller by the Acting Commissioner.) It thus having appeared by the letter of the Acting Commissioner that only 2,673.71 acres, embraced in the land claimed by McGarrahan, have been disposed of, it would seem that the only questions involved in the bill are his title to and his indemnity for the value of these 2,673.71 acres, and they being wholly left to the courts it is to be hoped they will meet with the approval of the committee and allow the courts to pass upon them.

I respectfully but earnestly urge that your honorable committee report their conclusion to the Senate at their earliest convenience to the end that opportunity may be had by that body to pass upon its merits during this Congress.

Very respectfully,

EPPA HUNTON,
Of Counsel.

Hon. H. M. TELLER, U. S. S.,
Senate Chamber.

P. S.—With a view of relieving the United States from further liability beyond that involved in the 2,673 acres, I respectfully suggest that the committee will be pleased to request the Commissioner of the General Land Office to instruct by letter the register and receiver of lands in the San Francisco, Cal., land district to not permit any proceedings to be had in their office in any way affecting the right,

title, or claim of William McGarrahan to the lands embraced within the limits of the rancho Panoche Grande; that said Commissioner of the General Land Office be requested to inform your committee what and all steps he shall take hereunder.

Respectfully,

WM. MCGARRAHAN.

EXHIBIT E.

WASHINGTON, D. C., January —, 1892.

The Senate, by request of Senator Teller, having referred my bill to the Judiciary Committee, of which you are an honorable member, for its consideration, I have taken the liberty of inclosing copies of a few reports which have been made in my case. First, is a favorable report of Hon. Charles O'Ferrall, Virginia, member of the present House, in the Fiftieth Congress. A similar favorable report was made by Hon. Mr. Clardy, Missouri, in the Forty-ninth Congress. A favorable report was also made by Hon. James B. Reilly, Pennsylvania, who is a member of the present House, in the Fifty-first Congress.

The second is also a favorable report which was made by Senator Teller in three different Congresses, but they were not considered by either House for reason they were not reached on the calendars. Senator Teller's report was originally made by Senator Wilson, when chairman of the Judiciary Committee of the Fortieth Congress, and passed the House by a large majority. Senator Teller adopted this report and it substantially embodies the reports of Messrs. O'Ferrall, Clardy, and Reilly. It has, however, a few exhibits attached to it which are not in the others, and which Senator Teller obtained, on personal application, from the Commissioner of the General Land Office, to which I respectfully invite your attention.

I have to respectfully request that you will be kind enough to read and examine them at your leisure.

Reports were also made in the Forty-sixth and Forty-seventh Congresses by Col. Muldron, Mississippi, and Judge Gunter, Arkansas, *which confirmed my grant outright without further litigation*, and a similar favorable minority report by Gen. Collins, Massachusetts, and other members of the Committee on the Judiciary of the Forty-eighth Congress, but were not considered for the reason assigned above, viz, they were not reached on the calendar.

The reports and bills referred to in the first and second paragraphs referred my case to the Court of Claims, with right of appeal to the Supreme Court for final adjudication.

The bill which I had the honor to submit through Senator Teller to the Senate, and which is now before your honorable committee, also refers my case, and *all* questions connected with it, to said courts for final adjudication.

A bill for my relief was also reported by the Hon. James F. Wilson, present Senator from Iowa, and a member of your honorable committee, when chairman of the Judiciary Committee of the Fortieth Congress, previously referred to, which passed the House by a large majority, but was not definitely acted on by the Senate.

A resolution was also reported for my relief by the Hon. John A. Bingham, Ohio, chairman of the Judiciary Committee of the House, in the Forty-first Congress, which also passed the House, but was not considered by the Senate.

A resolution was also reported for my relief by Gen. B. F. Butler, Massachusetts, chairman of the Judiciary Committee of the House, in the Forty-third Congress, which passed that body with only *eleven* dissenting votes, but was not considered by the Senate.

Praying for an early, and, I trust, a favorable consideration of my case,
I remain, very respectfully,

WM. MCGARRAHAN.

EXHIBIT F.

[Extract from the report of the House Committee on the Judiciary, Forty-eighth Congress.]

Mr. William O. Stoddard, secretary to the President to sign land patents, at the time this [the Rancho Panoche Grande] patent was signed, testifies with respect to signing it as follows:

I remember signing a patent for Panoche Grande in the spring of 1863. * * * I remember the Panoche Grande patent as one of three brought to me about the same time, so that I remember them together. * * * I was very apt to examine the large

patents, and this was a large one. I called the attention of others to it at the time. I called Mr. John Hay's attention to it, and I have tried very hard to remember the names of the others who were in the room, and whose attention was called to it, but I do not remember them at this distance of time.

When asked the question whether he had any doubt on his mind that the indorsement on the patent which he signed was "Panoche Grande," Mr. Stoddard answers, "No, sir." He further testifies that he recollected distinctly that the patent which he signed was a patent for "Panoche Grande."

Hon. John P. Usher, Secretary of the Interior at the time the patent was executed, according to the record, has been examined as a witness in a case in court in which the title to the "Rancho Panoche Grand" was in controversy, and his testimony was before the committee. In reply to a question touching the delay in the delivery of the patent, he testifies as follows:

"I was Assistant Secretary of the Interior from some time in March, 1862, until about the 10th of January, 1863, when I became Secretary of the Interior, and held that office until the 15th of May, 1865. I was appointed to these offices by Abraham Lincoln. To the first office I had no predecessor. To the second my predecessor was the Hon. Caleb B. Smith, some years since deceased. My attention was first called to the claim of McGarrahan, or to the 'Rancho Panoche Grande,' by my predecessor, Mr. Smith, upon my going into his room in the Department of the Interior; I think the last evening he was there transacting business as Secretary. He spoke of the claim and called my attention to it. I knew that he had been very busily engaged in his official duties, but did not know what he had been doing; but when I went into his room, I was informed by him that he had made a decision in the 'Panoche Grande' case; that he had decided it in favor of McGarrahan, after a full and careful investigation; that he thought McGarrahan ought to have the land, and he particularly expressed the wish and hope that I should attend to it, and see that his decision was carried out at the Land Office. I recollect that he said he was satisfied the contestants to McGarrahan had no claim to the land, and were acting oppressively towards McGarrahan. * * * I can not answer whether the delay in issuing the patent was useful to the opponents of McGarrahan or not; but at the time it appeared to me that it might have been, for, according to my recollection, sufficient time elapsed between the direction made by me, that the patent should issue, and the making the same ready for delivery, for the communication from Washington to California and return; and at that time, as we were on the point of delivering the patent (*it being ready for delivery, as I was informed*), Mr. Goold, whose given name I do not know, came on from California, in the interest of the contestants of McGarrahan, and made some communications to the Attorney-General, what, I do not recollect, if I ever knew, which influenced the Attorney-General to make a communication to the Department of the Interior, requesting that the patent should not be delivered to McGarrahan, and upon the request of the Attorney-General the patent was withheld."

He testifies further as follows:

"I do not personally know that the patent was made ready for delivery at any time, for it was not in the course of the business of the Department for the Secretary to inspect and approve the patent, unless the Commissioner of the General Land Office desired some instruction upon that subject, *but I was informed in the course of business* that the patent was made and was ready for delivery on the day that Mr. Goold came to the Department, and I had no reason to doubt that the patent was so made. * * * I did receive a communication, or communications, verbal, I think, from the Land Office, from the Commissioner or his chief clerk, or the clerks having the preparation of the patent in charge, that the patent was ready for delivery, and this must have been on the day of Mr. Goold's first coming to the Department, for my recollection is that I had then immediately heard the patent was ready for delivery, or I then possessed myself of knowledge of the fact from the proper sources that the patent was so ready. I may have gone around to the Land Office and inquired, or sent for the Commissioner. My information was such that I had no doubt of the fact. * * *

Some time after the direction to the Commissioner not to deliver the patent (how long I cannot say, but it may have been two weeks or a month), the President, Mr. Lincoln, at his apartments, inquired of me why I had not delivered the patent. This was the first time that I knew, or had any reason to suppose, that he knew anything about the case. I then told him all that I knew about it, and explained to him the reason why it had not been delivered. I narrated to him the conversation with my predecessor, Mr. Smith, and the interview with General Sickles and his party, the appearance of Mr. Goold, and the action of the Attorney-General, Mr. Bates. *The President seemed to regret very much* the action of the Attorney-General, but he did not know, and I was unable to inform him then, why the Attorney-General had taken such action. He said, "Well, see Mr. Bates, and see if the patent can not be issued

or delivered." * * * From time to time the subject of this patent was casually spoken of between the President and myself; how often I do not know. I was anxious that he should understand that I was doing all I could to have the patent delivered. * * * The President from the first spoke of the patent as having been executed ready for delivery. He said, "Why have you not delivered the patent to McGarrahan?" This was the first time he mentioned the subject to me. * * * I knew of the condition of the patent as well as I could know anything I had not seen; and understood from his (the President's) question that he knew that it was ready for delivery."

Simon Stevens, who is a relation of the late Hon. Thaddeus Stevens, and who spent half or two-thirds of every session of Congress with him in Washington while he was a member, testifies very fully with respect to certain conversations had in his presence between Mr. Lincoln and Mr. Thaddeus Stevens, with regard to the "Panoche Grande" patent, in one of which he swears Mr. Stevens said to Mr. Lincoln:

"If you are convinced that it is right, as Sickles says it is, sign the damned thing so as to get it out of the way."

This witness further testifies that on Saturday (which was the 14th day of March, 1863) he called upon the President on business for Mr. Stevens, and as he entered the room—

"The President was sitting at the head of the executive desk, and there was a large document lying on the corner of the table, and he pushed it toward me with a smile and said, 'That damn thing is signed,' simply quoting Stevens's language. Then, as he made the remark, a young gentleman entered the room of a peculiar countenance, and it happened to be Mr. Stoddard, who is now sitting in this room, and he took the document and carried it away, making some remark about the Land Office."

General Daniel E. Sickles, who, with General Thomas Francis Meagher, represented Mr. McGarrahan in the matter, testifies that, being unable to get the patent, and, as there was a difference between the Department of the Interior and the Attorney-General's office, it remained for the President, as supreme executive, to give the proper order in the case, he (General Sickles) requested the President to look into the case and decide it, which the President agreed to do. For this purpose printed briefs were submitted. General Sickles then continues:

"Some time afterwards I received a message from the President through General Halpin ('Miles O'Reilly'), whose intimate relations with the President were well known, who told me—I think I was in New York at the time—that in a recent interview with the President in Washington, the President had desired him to say to me he had decided my case in my favor. General Halpin told me he said to the President, 'I hope it is McGarrahan's case. I know Sickles is a friend of McGarrahan, and I heard the case was in your hands.' The President said, as General Halpin told me, 'Yes, that is the case. *I think McGarrahan is right*, and I have ordered, unless the Attorney-General, within 10 days, can show cause other and different than anything that has yet been shown, the patent must be issued.' On my next visit to Washington, en route to or from the headquarters of the Army of the Potomac, I had an interview with the President, in which he told me substantially what I had already learned from him through General Halpin."

General Sickles further testifies that he afterwards called upon the President and asked him:

"As nothing but a mere matter of detail remained, to give a direction that the patent be delivered; the President *said it was signed*, and appeared surprised to hear that it had not been delivered."

General Sickles further testifies:

"I met ex-Attorney-General Black about that time. * * * It was a friendly conversation—that of two commanders reviewing a battle which had just been fought and concluded. Judge Black said we had got our patent, and that part of the fight seemed to be over, but that it was one thing to get the patent and another thing to get possession; that there were many resources of defense yet open, but that possession probably was a mere question of time, and that we would reach that point, no doubt, by and by; that his connection with the case was about at an end, and the seat of war would be now in California."

Henry Beard, a practicing lawyer, residing in the city of Washington, testifies that from some time in 1861 until early in 1865 he was a clerk in the Interior Department, and had charge of all communications and all business relating to public and private land claims in the Secretary's office. He says that he recollects very well the fact that a communication from the Attorney-General's office to the Secretary of the Interior, requesting a suspension of the issue of the patent in this case, was received. He further says:

"That communication from the Attorney-General's office came to my desk about the middle of the day, and the Secretary was absent. I knew it was an important com-

munication. I knew the tract was large and valuable, and I knew that Smith and Usher had both examined the case; and shortly after it was received on my desk I carried it to the Acting Secretary, Judge Otto, and showed it to him. He was a little deliberate, and I think he probably said, "This patent has been delivered. This is too late." We both knew it was some days after the patent had gone. He said I had better go over and see either Mr. Wilson or Edmunds, I have forgotten which, and inquire if that patent had been delivered."

In reply to the question, "What information did you get respecting it?" Mr. Beard says:

"I was told that it was ready for delivery, but it was not yet delivered; that was the substance of the information. I was told, also, that if the Secretary wanted to stop this he must send over a communication very soon."

In addition to the foregoing testimony it is shown by the examination of clerks employed in the private land claims division of the General Land Office, that it was the custom in that office to leave the records of a patent unsigned until the patent itself was sent to the executive office for signature; then upon its return the record book was completed to correspond with the patent; that the letters "Exd" indicated that the patent and the record had been compared and that they corresponded.

Mr. A. Chester, a witness called by the New Idria Mining Company, was asked, upon this point, the following question:

"Now, I wish you to examine the letters 'Exd,' in red ink on the left margin of that record on page 312, and say to the committee what it means.—A. I should say that that 'Exd' wherever found is the final examination, and never put on until it was executed—until there was a final examination; that is what I should suppose."

To the further question:

"Now, if you had never known there was any controversy over the subject-matter of this record—never heard of any, and the committee had asked you, 'Mr. Chester, what does that signify?' what would you have answered?—A. That it was a finally examined and complete patent."

And to this question, "That it gave evidence that there was a complete patent, executed duly, the signature of the President or his private secretary and the seal of the Land Office attached to it, and that it had been recorded and examined with the original and found to be correct; and then that red ink mark 'Exd' had been placed there afterwards, would you not?" he answered "I should."

It is also shown by the testimony that the last thing to be done in the preparation and execution of the patent is the affixing of the seal of the General Land Office thereto.

It appears that Mr. McGarrahan knew nothing of the existence of this record in the General Land Office until the month of July, 1870. No patent was ever actually delivered to Mr. McGarrahan.

Hon. James F. Wilson, chairman of the Judiciary Committee of the House of Representatives of the Fortieth Congress, addressed a letter, dated the 17th day of January, 1867, to Hon. Joseph S. Wilson, then Commissioner of the General Land Office, requesting a copy of the patent which had been prepared and executed and never delivered in the case of the Panoche Grande land grant. The Commissioner on the following day replied by sending what he called "The original unexecuted patent for the Panoche Grand ranch." The same document was before the Senate Committee on Public Lands of the Forty-fifth Congress, at which time much testimony was taken in this case, as appears from S. Mis. Doc. No. 85, second session, Forty-fifth Congress, all of which has been before your committee. The testimony shows that this document consisted of eleven sheets of parchment containing the patent to the "Rancho Panoche Grande," as shown by the records, without the signature of the President, the date of its execution, and the seal of the General Land Office.

Mr. Julius N. Granger was the recorder of the General Land Office at the time the record of this patent was made. He was called to testify before the Judiciary Committee of the House on the 10th day of January, 1871, when he gave the following significant testimony:

"Q. Do you know whether the patent for Panoche Grande was ever presented to you or not, to be countersigned?—A. No, sir; I could not say whether it was or was not.

"Q. You kept no records of cases for California land grants, which you countersigned, except of the letters of transmission?—A. Nothing except the letters of transmission.

"Q. Are these letters of transmission sent to you by the Commissioner of the General Land Office before you countersign the patent?—A. Yes, sir; always.

"Q. Are you prepared to say whether there was or was not a letter of transmission, when the patent for Panoche Grande was sent to you?—A. I could only say that I never signed it without there was a letter.

"Q. Are you prepared to swear whether such a letter was sent to you?—A. No, sir; I am not.

"Q. Do you keep a file of these letters in your office?—A. I do keep them on file.

"Q. Have you made an examination of your files to see whether this letter is there on file?—A. I have.

"Q. State whether you can find any such letter.—A. I can find no such letter.

"Q. State in what way you keep those letters in your office?—A. I will state precisely. I place them in a drawer in my desk, where they remain until a considerable number has accumulated. I then take them out, bind them, and place them in my bookcase.

"Q. State whether you have looked in your bookcase for this letter.—A. Yes, sir; and also in my drawer.

"Q. State whether you have made more than one examination of your bookcase, and with what result.—A. The first time I made an examination was last summer, when I was called upon to know if there was such a letter. That was the first I heard anything about it. I looked the letters all over carefully, but did not find this letter. Sometimes the letters would become disarranged, or run over into another year, and I looked through tolerably careful, and noticed that there were letters for that year, 1863, which were missing.

"Q. State whether you have made an examination since that time.—A. Yes, sir; I took the letters out and put them together in the year in which they were written, and I found that in 1863 there were no letters from January down to June. The files of that year from July until December were all there.

"Q. State whether you are satisfied that between January and June, 1863, there were letters transmitted to you and filed by you in the regular course of business in your office.—A. I know there were such letters. I have taken great pains, for this is something that came unexpectedly upon me, to refresh my mind, and I find that there are fifty-one letters of transmission of land grants, under different acts, for my own division, between January and June, 1863. There were, of course, more patents than that; sometimes a single letter would inclose a large number of patents. The letter would simply say, "Your signature is requested to series of patents from number such a one to number such a one." That was all there was of the letter.

"Q. Then you say there were fifty-one letters of transmission which have been taken from your office?—A. They certainly must have been taken; at least I have had them, but can not now find them; they are out of my office, I am confident.

"Q. And letters coming to you from January to June, 1863?—A. Yes, sir.

"Q. Have you any knowledge of what has become of them?—A. I have not.

"Q. State to the committee whether, from an examination of your desk and lock, there is any evidence of there having been any interference with the lock or keys in any way.—A. I could not say that there has been any interference with it; it is a very common lock, which can be opened with a very common key; I always kept it locked. I ascertained this just on Saturday last, and yesterday when I came to my office I wanted to make a careful examination, for I knew there had been a large number missing from the files of the year 1863, and I wanted to see if I had these letters on record.

"Q. You made no record of the transmission of private land claims?—A. Never; I kept the letters themselves. When I went to my bookcase yesterday morning to look over my files again and compare them with the letter-book, I found an old key in the lock and the lock very much disturbed. The key I found was an old brass key, which was in the lock of my bookcase; it had evidently been used to unlock the lock, and then pulled back to get it out again. It remained in the lock.

"Q. Was that your key?—A. No, sir; I inquired carefully of others, and could find no one who had any such key.

"Q. Where did you find this key?—A. In my bookcase, where I keep my files.

"Q. And what did you say in regard to its use?—A. It had evidently disarranged the lock, so that the key could not be drawn out without a good deal of trouble.

"Q. When did you first make the discovery that these letters of transmission had been taken out of your possession?—A. Last summer; but I had not settled down in my mind that they were really lost. I expected to find them in some other place. I made the discovery in looking after the adjournment of Congress, in regard to some matters before the courts, and I then had the letters overhauled and put into the files for the year in which they were written.

It appears from the testimony of James M. Armstrong, a witness on behalf of the New Idria Mining Company before the Senate committee, that what purports to be the unexecuted patent consists of eleven sheets or pages of parchment; that all the full pages preceding page 10 have thirty-eight lines; that page 10 has only thirty-one lines; that page 11 is not a full page; and that the general texture of the last two pages seems to be a little heavier than most of the preceding pages.

The last pages contain the *habendum and testimonium*, and it is claimed by Mr. McGarrahan that these last two pages have been substituted for the original last two

pages, the last of which bore the signature of Mr. Lincoln and the seal of the General Land Office.

The committee have had before them the sworn testimony of General Daniel E. Sickles, taken under a commission issued out of the district court for the twentieth judicial district of California, in a case between the claimant, William McGarrahan and the New Idria Mining Company, taken, on the 2d day of July, 1873, at Madrid, while General Sickles was minister to Spain, in addition to that taken by a committee of Congress, from which a quotation has already been made, in which General Sickles, in answer to one of the questions propounded to him, makes answer as follows:

"Early in 1864 I was ordered South by the President, and before my departure, which I believe was in February, I spoke to the President again about the patent. I asked him to sign it before I left town. *He said he had signed it*, and expressed surprise on learning from me that I had not received it. I mentioned the matter again to Mr. Usher, and stated that I had learned from the President that the patent had been signed; and as I expected to be absent for several months, in the South, I wished, before I left town, to send the patent to McGarrahan, who was then in California. He said I should have it. I saw the Secretary afterwards in consequence of a message received from him, when he told me that Mr. Sweet, a Government agent, had written or telegraphed advising further delay."

General Sickles appends to his deposition an autograph letter from President Lincoln to him, which is as follows:

"WASHINGTON, D. C., August 22, 1863.

"Major-General SICKLES:

"MY DEAR SIR: Your note and brief about the California land claim are received. *The question presented is a property question*, with which I do not think I should meddle as a volunteer. It will save me labor, therefore, if you will first point me to the law which assigns any duty to the President in the case. This done, next send me a reference to the treaty and all the statutory law which bears upon the case.

"Yours, truly,

"A. LINCOLN."

The italics are ours. Mr. Lincoln was not only a man of rare good sense, but he was besides a lawyer of recognized ability. He certainly knew that he had the power to sign land patents, and that in a matter of the mere signing of a land patent he could not have been a meddler. Therefore, so far as he was concerned, *he* knew the question presented to him was one more far-reaching than the signing of a land patent. General Sickles was ignorant of the fact at the time that Mr. Lincoln had already signed the patent, and, perhaps, did not fully appreciate what Mr. Lincoln said about the question presented being "a property question," but to us this letter amounts to a demonstration that Mr. Lincoln knew when he wrote it that the patent had been already signed. Whether he should go farther as President, or leave the settlement of this "property question" to the decision of the courts, was the matter which disturbed him.

The committee, in view of the positive and uncontradicted testimony of so many trustworthy witnesses that the patent was signed by the President and ready for delivery, in connection with the record in the General Land Office of an executed patent, and other testimony before them, are forced to the conclusion that the patent was executed and ready for delivery, and that the President, after argument, directed the delivery of the patent.

The committee, without entering into its details, append hereto as "Exhibit E" the additional testimony taken by the claimant since the decision was rendered by the land commissioners, corroborative of what was taken before them.

The fact that the genuineness of the *espediente*, found in the Mexican archives, is not now and never has been questioned; and the further fact that during the thirty years and more which have elapsed since the testimony was taken before the land commissioners it has not been impeached in the least particular, notwithstanding the abundant resources of those who have been contesting this claim are noteworthy, and, when considered in connection with the additional testimony in the case, remove all doubt of the grant to Gomez; and when it is shown that Gomez had a grant protected by the treaty of Guadalupe Hidalgo, that fact must necessarily carry with it all its legitimate consequences.

The Supreme Court in one of the California land cases, speaking with respect to the spirit in which they should be considered, say:

"The cession of California by the treaty of Guadalupe Hidalgo did not impair the rights of private property. They were *consecrated* by the law of nations and protected by the treaty. The treaty was a formal recognition of the pre-existing sanction of the law of nations. The act of March 3, 1851, was passed to assure the inhabitants of the ceded territory the benefits of the rights of property secured to them. It recognizes alike legal and equitable rights and *should be administered in a large and liberal*

spirit. A right of any validity before the cession was equally valid afterwards; and while it is the duty of the court in the cases which come before it to guard carefully against claims originating in fraud, it is equally their duty to see that no rightful claim is rejected. No nation can have any higher interest than the rightful administration of justice."

The honor of the nation is pledged to the faithful execution of its treaty obligations. Treaties are declared by the Constitution to be the supreme law of the land, and a powerful Government like ours should be more zealous to keep faith with a weak one like Mexico than with a stronger one. And there certainly can be no hardship to the Government in permitting the Mexicans to retain and enjoy their private property, according to the terms of the treaty, because the vast domain which the Government acquired as public lands by reason of the cession of California is of almost incalculable value.

The committee have bestowed a great deal of time, labor, and attention upon this case, in order to ascertain its real facts and merits. Mr. McGarrahan, by himself and counsel, and the New Idria Mining Company, the only party contesting his claim, by its counsel, have been heard patiently and at great length. They have reached the following conclusions:

1. That the proof of a legal grant from the Mexican Government to Gomez and the transfer of title to McGarrahan are clearly and indisputably shown.

2. That the district court of the United States for the southern district of California confirmed the grant.

3. That Hon. Caleb B. Smith, Secretary of the Interior, after examination and consideration of the case, ordered a patent to be issued to Mr. McGarrahan.

4. That Mr. Usher, the successor in office of Mr. Smith, similarly decided.

5. That Mr. Lincoln signed the patent, and afterwards, upon full inquiry, decided the grant to be genuine, and ordered the delivery of the patent to Mr. McGarrahan.

They therefore report the accompanying bill as a substitute for the bill (H. R. 1980) by which the title to the Rancho Panoche Grande is confirmed to William McGarrahan in accordance with the provisions of the act of March 3, 1851, with a provision that if any portion of said tract shall have been legally disposed of to innocent purchasers by the United States, the same shall be excepted from the operation of the provisions of the act. And with the further provision that the act shall not apply to any person who in good faith, with intent to obtain title to any portion of said tract of land as public lands, under the laws of the United States, has settled upon the same.

The second section provides for indemnity to said William McGarrahan for such portions of said tract of land as may have been or may hereafter be legally disposed of to innocent purchasers as aforesaid. The question of the rents, issues and profits, including minerals if they passed under the grant as confirmed by the act, is referred to a commission to be appointed by the President, with the right of appeal to the supreme court of the District of Columbia, and finally to the Supreme Court of the United States.

The reason why your committee recommend that jurisdiction be given to the supreme court of the District of Columbia rather than to the United States court of California is that it will be less expensive and troublesome to both parties for the litigation, if any should arise, to be conducted in that court.

The appropriation to carry into effect the act, limited to \$5,000, is recommended, because the previous action of the Government has rendered it necessary, and because the Government is interested in the proper and final settlement of the controversy, and should pay its proportion of the expenses.

The power of Congress to grant the relief thus granted has been doubted to a certain extent. Perhaps we cannot better reply to the suggestion of such a want of power in a case of this kind, leaving out of view the duty of Congress to grant relief, than by reproducing here what a distinguished constitutional lawyer said in the United States Senate, in a debate upon a bill which involved this question a few sessions ago. He said:

"Mr. President, I am not unmindful of the character of the tribunal I am addressing to-day. I am not here before a court which strains itself on tiptoe to measure the phraseology of a sentence in a statute. I am here before a body representing the sovereignty and the power of a great people. I am here before a body that has authority to set aside the law if the interests of justice or humanity demand it. I am not addressing myself to the creature of the statute. I am making no appeal to the Court of Claims, or to any other inferior tribunal, which has no power to move a step unless it finds it in the authority of the written law. I am here addressing myself to the great power of the Senate, representing in part the sovereignty of this Government, from which there is no appeal.

"This question has been argued as though it was a question of law presented to a court of limited jurisdiction, bound down and tied down by the narrow and technical rules of jurisprudence. We are in no such body, sir, and this is not, in my judgment,

the kind of case in which it can be said that the Supreme Court has made the law on the subject. Sir, the Supreme Court, with all its great dignity and power, does not make the law for the Senate of the United States. It may expound and interpret the laws that we enact for its government and guidance, but it makes no laws for us. This is not a contest between individuals where, when the court decides the case, it cannot be interfered with except by a violation of private right. When the judicial tribunals of the country determine a question between man and man, that is the end of it; but where a court decides a question between the sovereign and the citizen, between the government and a subject, it is not necessarily the end of it. That citizen has a right to appeal to the magnanimity of his government; that citizen has the right to appeal to the justice of his sovereign, and say to him, as this citizen says to-day, "You must not take advantage of this judgment." Such an appeal to a private party, we know from our knowledge of human selfishness, would be vain; but when the address is made to the great sovereign power of a great country, it is always listened to, and sometimes with effect. The records of Congress show numerous cases in which this power has been invoked. How often has Congress said, where a judgment was rendered against a surety on an official bond, that he should be exonerated from the payment of the penalty that the court had no power to relieve him of." (See Congressional Record, Forty-fifth Congress, third session, Vol. 33, page 783.)

It matters not whether it was by fraud or mistake that McGarrahan was deprived of his property. It was done by the use of the machinery of the Federal courts, and in all the cases the United States was the party to the record against him. The question is not whether he was deprived of his property under the forms of law, but "WAS HE UNJUSTLY DEPRIVED OF IT." Upon all the evidence we can not escape the conclusion that he was unjustly deprived of it, and that it would be an indelible stain upon the honor of the country not to make him full compensation. We, therefore, recommend the passage of the following bill:

A BILL for the relief of William McGarrahan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title to the tract of land known as the Rancho Panoche Grande, in the State of California, granted by Governor Manuel Micheltonena to Vicente P. Gomez in the year eighteen hundred and forty-four, and by said Gomez conveyed to William McGarrahan on the twenty-second day of December, eighteen hundred and fifty-seven, and surveyed by the United States surveyor-general for the State of California, which survey was approved by said surveyor-general on the eleventh day of September, eighteen hundred and sixty-two, and was approved by the Secretary of the Interior, which said survey is now on file in the General Land Office, be, and the same is hereby, in all respects fully confirmed to said William McGarrahan, according to the terms and provisions of the act to ascertain and settle private-land claims in the State of California, approved March third, eighteen hundred and fifty-one: *Provided*, That if any portion of said tract of land shall have been legally disposed of to innocent purchasers by the United States, the same shall be, and hereby is, excepted from the operation of the provisions of this section of this act: *Provided further*, That this section of this act shall not apply to any person who, in good faith with intent to obtain title to any portion of said tract of land as public lands under the laws of the United States, has settled upon the same, but such settler shall be entitled to obtain title to said portion in such manner and upon such terms and conditions as may be provided by law for disposing of public lands.

SEC. 2. That the United States shall indemnify the said William McGarrahan for such portion of said tract of land as may have been or may hereafter be legally disposed of to innocent purchasers as aforesaid, and for the rents, issues, and profits of such portion of said tract of land as has been heretofore used and occupied by any person or corporation, including minerals, if such are found to have passed by the grant as hereby confirmed; and to that end it is hereby made the duty of the President to appoint a commissioner whose duty it shall be to ascertain the value of such portion of said tract so disposed of, and the rents, issues, and profits as aforesaid, for which purpose the said commissioner is hereby authorized and empowered to take testimony, to summon witnesses, and to administer oaths, according to the rules of practice in courts of equity of the United States. The said commissioner shall report his findings to the Secretary of the Interior; the Secretary of the Interior or the said William McGarrahan, if dissatisfied with the report of said commissioner, may, within ninety days from the filing of said report, file his petition in the general term of the supreme court of the District of Columbia setting forth his objections to said report, and thereupon the said court shall have jurisdiction to change, modify, or confirm said report according to the testimony returned therewith; and the said supreme court of the District of Columbia shall, on the application of either party within ninety days,

grant an appeal to the Supreme Court of the United States. The said William McGarrahan, or his legal representatives, may select and shall be allowed patents for so much of the unoccupied and unappropriated lands of the United States, not mineral, and in tracts not less than the subdivisions provided for in the United States land laws, and, if unsurveyed when taken, to conform when surveyed to the general system of the United States, as shall equal in value, at the prices established by law, according to the findings of said commissioner or the court, as the case may be, the portion of said tract so disposed of by the United States, and the rents, issues, and profits as aforesaid; and the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, is hereby authorized and directed to issue scrip, in legal subdivisions, to the said William McGarrahan, or his legal representatives, in accordance with the provisions of this section of this act; and the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to carry into effect the provisions of this act, to be paid upon the certificates of the Secretary of the Interior.

PATRICK A. COLLINS.
WILLIAM C. MAYBURY.
H. BISBEE, JR.

EXHIBIT G.

JOINT RESOLUTION in regard to the "Panoche Grande" land grant.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, directed to cause the record on pages three hundred and twelve to three hundred and twenty-one, inclusive, in volume four of "California Land Claims," of the patent of a tract of land known as the "Panoche Grande," as set forth therein, to be transcribed into the records as the same stood on the record book of the General Land Office at the time it was examined, without any mutilation or erasure whatever, so that the legal effect of the record so transcribed shall be the same as if the original record had never been interfered with or mutilated; and when such record shall have been so made as herein provided it shall be marked "examined," as it was originally marked. And the President of the United States is hereby authorized and required to do in the premises whatever may, in his judgment, be just and equitable, without regard to any action or proceeding had subsequent to the fourteenth day of March, eighteen hundred and sixty-three, the date of the patent recorded.

Passed the House of Representatives February 20, 1871.

Attest:

EDWARD MCPHERSON,
Clerk.

The record of the patent as printed in this report is marked in red ink in the books of the General Land Office "Ex'd," the official meaning of which is that the record of the patent had been compared with the parchment patent and found correct.

There is no record of a patent in the California land grants having "Ex'd" on it which did not carry the title to the property it represents, except the record in question.

AMANDA G. WALTER.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 259.]

The Committee on Claims, to whom was referred House bills 4512 and 4513, having had the same under consideration, together with Senate bill 259, the two bills being for the relief of the same party and for the same cause, recommend that said Senate bill 259 be substituted for said House bills 4512 and 4513, and that the House concur with the Senate in the passage of said Senate bill.

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ARTICLE

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.
1917

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JOHN W. FERRIS.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 4983.]

The Committee on Claims, to whom was referred House bill 4983, having had the same under consideration, report the following facts, which are fully set forth in the affidavit of John W. Ferris and accompanying papers, which are hereto annexed:

Said affidavit, marked Exhibit A, the letter of W. H. Heuer, major of engineers, U. S. Army, marked Exhibit B, with a copy of proposals and specifications for said work, marked Exhibit C.

Your committee are satisfied from the evidence submitted that the said claim of John W. Ferris is a legal and equitable claim against the United States, and recommend the passage of the accompanying bill.

EXHIBIT A.

STATE OF CALIFORNIA, *City and County of San Francisco:*

John W. Ferris, being duly sworn, says that he is a civil engineer; that on or about the 30th day of April, 1891, an advertisement was issued and published by W. H. Heuer, major of engineers, U. S. Army, stationed at San Francisco, California, asking for sealed proposals for "building a pile and brush dam across Paradise Cut, San Joaquin River, California." A copy of said advertisement with specifications are hereto attached, marked Exhibit A.

That in accordance with said advertisement and specifications affiant presented a sealed proposal for the construction of said dam. That several other parties made bids, but affiant's bid was about twenty-five hundred dollars lower than any other bid and about five thousand dollars lower than the highest bid.

That affiant's bid was made upon the basis of the actual cost of the labor and material and without allowing anything for his care and superintendence of the work. That the reasons why he took the contract upon such terms were, that several years ago a dam was constructed at Paradise Cut, which was soon washed away and resulted in making the Cut much larger. That certain friends of affiant who owned land on the San Joaquin River, and felt great interest in the preservation of the stream, requested affiant to make a bid simply covering the cost of labor and material, in order to be certain that the contract would be awarded to affiant, they believing that affiant would construct a dam that would not be washed out.

That affiant having made the lowest bid, the contract was awarded to him and he commenced the work. That when the dam was about three-fourths constructed affiant was informed by Major Heuer that only about eleven thousand dollars of the appropriation could be made available for this dam, and that affiant must cease work or complete the dam at his own risk. That this dam is what is known as a "wier dam" and, as is stated in the specifications, "the crest of the dam will be eight feet above low water and will be submerged during freshets." That at the time affiant was notified by Major Heuer, as above stated, the dam was in that condition that if work had been suspended and the dam not completed it would have been greatly damaged, if not entirely destroyed, by the high water during this winter. That at the request of the friends hereinbefore mentioned, and also through a desire to see the dam completed, and that it should not be left in a condition to be easily destroyed, affiant continued work until the dam was thoroughly completed.

That the dam when completed was examined by Maj. Heuer and Col. Mendell and pronounced satisfactory, and affiant is informed and believes that the dam was examined by the travelling inspector of the Government and by him stated to be the best contract work of that kind ever done for the Government. And affiant says that the amount unpaid by the Government is the sum of \$2,107.16, as appears by the statement of Maj. Heuer hereto attached, and, as he is informed, also appears in the records of the War Department at Washington City. And affiant says that he has received the sum of \$11,079.55, which added to the said sum of \$2,107.16 makes a total of \$13,186.71. That said sum does not represent the entire value of the labor and material put into said dam; that there was also put into said dam material and labor of the value of \$2,069.11.

JOHN W. FERRIS.

Subscribed and sworn to before me this 20th day of January, 1892.

[SEAL.]

JAMES L. KING,

*Notary Public in and for the city and county of San Francisco,
State of California.*

EXHIBIT B.

UNITED STATES ENGINEER OFFICE,
ROOM 89, FLOOD BUILDING,
San Francisco, Cal., November 20, 1891.

DEAR SIR: The amount of materials placed in the Paradise Cut dam and the contract price per unit of same is reported by the inspector to have been as follows:

9,026.46 cubic yards brush, at 67½ cents.....	\$6, 092. 86
1, 166 gross tons of rock, at \$3. 30	3, 847. 80
322 piles driven, at \$4.75	1, 529. 50
8,022, paid for 7,055 linear feet of round piles, at 21 cents.....	1, 481. 55
Setting 90 posts for shore protection, at \$1.50 each	*135. 00
Crib at one end of dam.....	*100. 00

Total.....	13, 186. 71
You were paid by the United States for above	11, 079. 55

2, 107. 16

In other words, I should have paid you for work done on Paradise Cut, had the appropriation been sufficient to have done so, \$13,186.71; but in consequence of the lack of funds caused by increased expenditures on the Lairds Slough dam, payable from the same appropriation, of which fact you were duly informed, you received only \$11,079.55 which was practically (within less than \$2) all there was left of the appropriation.

I desire to congratulate you on the creditable and successful manner in which you handled and completed the work, and consider it by far the best piece of work ever done for the Government for the amount of money expended.

Very truly yours,

W. H. HEUER,
Major of Engineers.

MR. JOHN W. FERRIS,
San Francisco, Cal.

EXHIBIT C.

*Proposals for building a pile and brush dam across Paradise Cut, San Joaquin River,
California.*

ADVERTISEMENT.

U. S. ENGINEER OFFICE,
San Francisco, Cal., April 30th, 1891.

Sealed proposals, in triplicate, for constructing a dam across Paradise Cut, San Joaquin River, California, will be received at this office, room 89, Flood Building, until 12 o'clock, noon, Monday, June 1, 1891, and then publicly opened.

Attention is invited to acts of Congress approved February 26, 1885, and February 23, 1887, Vol. 23, page 332, and Vol. 24, page 414, Statutes at Large.

The United States reserves the right to reject any or all bids.

For further information apply at this office.

W. H. HEUER,
Major of Engineers, U. S. A.

*Estimated, not specified in contract.

SPECIFICATIONS.

Location.—Paradise Crevasse is about two miles in a straight line and three and a half miles by river above the Southern Pacific R. R. bridge over the San Joaquin River. It is 200 feet wide and 15 feet deep in the lowest place at low stage of the river.

Description of the work.—The work consists of a dam of brush and piles, ballasted with bags filled with sand, rock, and boxes filled with sand. The crest of the dam will be 8 feet above low water and will be submerged during freshets. The flanks of the dam will project some 40 feet over the banks on each end to protect it from erosion. These two flanks will be 8 feet higher than the crest of the dam proper.

Piles.—Piles will be of Oregon pine, 12" to 14" diameter at the butt. The lengths of the piles will be from 30 to 50 feet, according to the heights of the ground, and must be driven or pumped into the bottom 25 feet, if practicable. The piles to be driven in rows (probably four) as required. The rows to be 10 feet apart and the piles in each row 6 feet apart.

Wales.—Wales are to be of redwood 4 inches thick. They are placed near the top of the piles, connecting each pile in every row and each pile to the one opposite in the next parallel line or row of piles. These waling pieces are to be bolted to each pile by one three-quarter-inch round bolt with a washer $\frac{1}{4}$ inch thick and a nut at each bearing. They will not be put on permanently until after the brush work is finished and ballasted.

Brush.—Before any brush is laid a temporary dam will be built between the site for proposed dam and the river, the water pumped out, and the bottom and banks of the cut over the area covered by the mat shall be evened off and cleared of all foreign substances, such as logs, lumber, and driftwood. This must be done by the contractor free of expense to the United States.

A mat or series of mats will then be constructed of live, straight brush—no butt to be larger than 2" in diameter.

This mat will cover the entire width of the crevasse, including the face of and about 40 feet of each bank, making the total length of mat about 300 feet and the average width about 85 feet. A sketch can be seen at this office showing details of construction of a mat. It can be made in one mat if desirable, but if made in sections no mat shall be less than 40 feet in length and 25 feet in width.

A mat will consist of four layers of brush, each layer 8" in thickness, bound securely together between two layers of poles. The first layer of brush will be laid on the lower row of poles at right angles to it, the bindings of the bundles cut, and the brush spread evenly. The next layer at right angles to the first, bundles cut and spread as before, and so on for the third and fourth courses, which brings the last layer at right angles to the upper tier of poles. These poles must not be over 5" in diameter at the butt and not less than 2" in diameter at the top.

One course of poles will be laid on the ground in parallel rows 4 feet apart and the other on top of the mat at right angles to the lower row and also in parallel rows 4 feet apart.

For binding and compressing the mats new 18-thread ratline will be used at each crossing of the poles; that is, every 4 feet in length and width of the mat. The amount of compression will be governed by the full strength of the ratline. Each mat as it is laid will be secured to the one adjoining by a lashing of the same ratline every four feet, thus making the top course of poles continuous. After the entire mat is completed it will be ballasted with sand in bags or rock, as may be directed. The piles will then be driven through the mat; additional brush will then be placed between and around the piles to the required height and loaded with rock or sand in boxes. It may be found necessary to secure a portion of the mat to the bottom or banks by stakes or pins; if this is required the contractor will furnish and drive by hand such stakes or pins in such position, number, and size as may be directed, this expense to be included in the price bid for brush.

Ballast.—On the outside or river side of the dam sand in bags will be mostly or wholly used—a row of boxes filled with sand or rock being placed on the mat next to the line of piles. On the inside of the dam on the apron and on the top of the pile work rock or boxes filled with sand will be used, rock being preferred. If rock is used it must be in pieces of not less than 500 lbs. each, of good quality, not liable to break in handling nor to disintegrate. It will be placed on the brush in such shape and quantity as the agent of the U. S. may direct. If boxes filled with sand are used, they will be made of $1\frac{1}{2}$ inch redwood, 10 feet long inside dimensions, 17" wide and 12" high, with 4 partitions crosswise, dividing the box into five compartments, these partitions to be nailed to bottom, sides, and top. The boxes will be made sand-tight, filled with sand in place, and top securely nailed on. Afterwards these boxes will be spiked to each other, 4 in a row, by battens of $1\frac{1}{2}$ "x3" pine.

Sand bags to be new, tight grain bags, each to be filled and securely tied, to weigh not less than 150 lbs. when filled.

Measurements.—The piles will be measured before driving, the length of pile for each place to be decided by the agent or the inspector of the United States in charge of the work. The brush will be securely tied in bundles about 10" in diameter, measured on the bank after being piled at least 10 feet high. Rock, if used, will be estimated by the displacement of barges or lighters transporting it.

Whatever lumber there is on the ground remaining from the dam previously built can be used by the contractor free of charge, and bidders are requested to visit the locality and judge for themselves what can be used, and acquaint themselves with the difficulties and the means of carrying out the contract.

The work, it is thought, will require 155 piles from 30 to 50 feet long (average length, 40 feet), 6,000 cu-yards of brush, 10,000 sacks filled with sand and placed, 350 boxes filled with sand and placed, 1,000 tons (of 2,240 lbs.) of rock in place.

The above quantities are approximate and will be used in determining if boxes filled with sand or rock shall be used, with what proportion of each, and to whom to award the contract. The right to use as much, more or less, of each ingredient as may be required to complete the work is reserved.

Time.—Work can be commenced any time after approval of the contract, but must be completed on or before October 1st, 1891. When work is once commenced it must be carried to completion uninterruptedly. Bidders must state the time at which they propose to commence the work. In competent hands the work can be completed in 30 days. No extension of time for completion beyond October 1st, 1891, will be granted.

Bond.—The bidder's bond accompanying bid will be for \$1,000. When contract is awarded the contractor's bond will be for \$2,500.

Inspector.—The work will be conducted under the direction of an inspector appointed by this office, who shall have the power to prescribe the order and manner of executing the same, and of inspecting and rejecting materials, work, and workmanship, which in his judgment do not comply with these specifications.

Payments.—Payment for work will be made at the end of each month, depending on the quantity of work completed during the month, less 10 % reserved until final completion of contract.

GENERAL INSTRUCTIONS FOR BIDDERS.

1. All bids must be made in triplicate, upon printed forms to be obtained at this office.

2. The guaranty attached to each bid must be signed by two responsible guarantors, be certified to as good and sufficient guarantors by a United States district attorney, collector of customs, or any other officer under the United States Government, or responsible person known to this office.

3. When firms bid, the individual names of the members should be written out, and should be signed in full, giving the Christian names; but the signers may, if they choose, describe themselves in addition as doing business under a given name and style as a firm.

4. All signatures must have affixed to them seals of wax or wafer.

5. The place of residence of every bidder, with county and State, must be given after his signature, which must be written in full.

6. All prices must be written as well as expressed in figures.

7. A percentage of ten (10) per centum will be retained from each payment until the completion of the contract, except where (as in cases in which no payment is to be made until a work is completed) such percentage may, in the opinion of the officer in charge, properly be dispensed with.

8. The contract which the bidder and guarantors promise to enter into shall be, in its general provisions, in the form adopted and in use by the Engineer Department of the Army, blank forms of which can be inspected at this office, and will be furnished, if desired, to parties proposing to put in bids. Parties making bids are to be understood as accepting the terms and conditions contained in such form of contract.

9. Reasonable grounds for supposing that any bidder is interested in more than one bid for the same item will cause the rejection of all bids in which he is interested.

10. The United States reserves the right to reject any and all bids, and to waive any informality in the bids received; also to disregard the bid of any *failing bidder or contractor* known as such to the Engineer Department.

11. The bidder must satisfy the United States of his ability to furnish the materials or perform the work for which he bids.

12. Transfers of contracts, or of interest in contracts, are prohibited by law.

13. In submitting proposals the sealed envelope must be so indorsed as to indicate before being opened the particular work for which the bid is made.

PROPOSAL.

SAN FRANCISCO, CAL., ———, 1891.

To Maj. W. H. HEUER,

Corps of Engineers, U. S. A., San Francisco, Cal.:

SIR: In accordance with your advertisement of April 30th, 1891, inviting proposals for furnishing the labor and material to construct a dam across Paradise Cut, San Joaquin River, Cal., and subject to all the conditions and requirements thereof and of your specifications, copies of which are hereto attached, and so far as they relate to this proposal are made a part of it, we (or I) propose to furnish—

As many feet of piles as may be required.....at	cts. per foot.
Driving each pile and fastening wale pieces thereto.....at	per pile.
As much brush made into mats and placed as may be required..at	per cubic yard.
As many bags filled with sand and placed as may be required..at	per bag.
As many boxes filled with sand and placed as may be required..at	per box.
As many tons (2,240 lbs.) of rock in place as may be required..at	per ton.
Waling pieces furnished by contractor.....at	per running foot.

GUARANTEE.

We, ———, of ———, in the State of ———, and ———, of ———, in the State of ———, hereby guarantee and bind ourselves and each of us, our and each of our heirs, executors, and administrators, to the effect that if the bid of ———, herewith accompanying, dated ———, 189—, for furnishing all the labor and material necessary for building a dam across Paradise Cut, San Joaquin River, Cal., shall be accepted in whole or in part within sixty (60) days from the date of the opening of proposals, the said bidder, ———, will, within ten days after being notified of such acceptance, enter into a contract with the United States in accordance with the terms and conditions of the advertisement, and will give bond with good and sufficient sureties for the faithful and proper fulfillment of the same. And in case the said bidder shall fail to enter into contract within the said ten days with the proper officer of the United States, and furnish good and sufficient bond for the faithful performance of the same according to the terms of said bid and advertisement, we and each of us hereby stipulate and guarantee, and bind ourselves and each of us, our and each of our heirs, executors, and administrators, to pay unto the United States the difference in money between the amount of the bid of the said bidder and the amount for which the proper officer of the United States may contract with another party to furnish said labor and material if the latter amount be in excess of the former, for the whole period covered by the proposal.

—————. [SEAL.]
 —————. [SEAL.]

Witness:

—————
 —————

Dated: ———, 189—.

[Executed in duplicate.]

JUSTIFICATION OF THE GUARANTORS.

STATE OF ———, *County of* ———, ss:

I, ———, one of the guarantors named in the within guarantee, do swear that I am pecuniarily worth the sum of one thousand dollars, over and above all my debts and liabilities.

[Signature of guarantor.] ———.

Before me.

[Signature of officer administering oath with seal, if any.] ———.

STATE OF ———, *County of* ———, ss:

I, ———, one of the guarantors named in the within guarantee, do swear that I am pecuniarily worth the sum of one thousand dollars, over and above all my debts and liabilities.

[Signature of guarantor.] ———.

Before me.

[Signature of officer administering oath with seal, if any.] ———.

CERTIFICATE.

I, _____, do hereby certify that _____ and _____, the guarantors above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

[Signature of certifying official.] _____

NOTE.—The certificate may be given separately as to each guarantor, and modified accordingly.

○

MARY J. CORCORAN.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUTLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8971.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 8971) granting a pension to Mary J. Corcoran, submit the following report:

Mary J. Corcoran is the widow of Henry Corcoran, who enlisted in Company E, Twelfth Michigan Infantry, January 17, 1862, and died at Louisville, Ky., November 12, 1862. The soldier was in the convalescent hospital at Park Barracks, Louisville, Ky., and was found dead on the railroad track near by.

The claim for pension was rejected under general law on the ground that it was not proven that the soldier died in line of duty. The application under the law of June 27, 1890, was denied on the ground that the statute made no provision for pension when the soldier died in service. The Department held that the widow could not be pensioned under the provisions of the law of 1890, because the soldier was not honorably discharged, and that an honorable discharge was an essential prerequisite to pension in the case of a widow. The soldier died while in the service, being killed by a train of cars on the railroad near the convalescent hospital. It can not be established that he was in the line of duty; it is probable that death was the result of accident. The widow has no property and is dependent on her labor for support.

In view of all the facts the committee would recommend the passage of the bill with the following amendment:

Amend by striking out the word "twelve" in line 7, and inserting in its stead the word "eight."

SANTA FE, PRESCOTT AND PHOENIX RAILWAY COMPANY.

JUNE 7, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MITCHELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 8123.]

The Committee on Military Affairs have had under consideration the bill (H. R. 8123) granting to the Santa Fe, Prescott and Phoenix Railway Company the right of way across the Whipple Barracks military reservation in Arizona and report the same back, with accompanying letter from the Secretary of War.

In the opinion of the committee, the granting of the right of way will be altogether advantageous to the Government. It therefore recommends the passage of the bill with an amendment:

Provided, That the right to repeal this act, if the interest of the United States should so demand, is hereby expressly reserved.

WAR DEPARTMENT,
Washington, May 14, 1892.

SIR: I have the honor to return House bill No. 8123, Fifty-second Congress, first session, granting to the Santa Fe, Prescott and Phoenix Railway Company the right of way across the Whipple Barracks military reservation in Arizona, and beg to advise you that in reporting upon the bill the commanding general of the Department of Arizona remarks as follows: "There are no objections to this right of way being granted. I urgently recommend that it be given with as little delay as possible. This new road will not only make the troops of Whipple more available for any emergency, but their subsistence more economical."

In these views the Major-General Commanding the Army concurs.

Very respectfully,

S. B. ELKINS,
Secretary of War.

The CHAIRMAN OF THE COMMITTEE ON MILITARY AFFAIRS,
House of Representatives.

CATHOLIC CHURCH AT MACON CITY, MO.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to
be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted
the following

REPORT:

[To accompany H. R. 4097.]

The Committee on War Claims, to whom was referred the bill (H. R. 4097) for the relief of the Catholic church at Macon City, Mo., submit the following report:

The evidence submitted shows that the church building was taken possession of, used, and occupied by various commands of United States troops during the fall and winter of 1864; that the use of said building was necessary to the health and lives of the troops, and that the rental value for the time it was so used was reasonably worth the sum of \$725.

The building was much damaged and injured in value by said occupation, of which the committee have taken no account.

Your committee report back the bill and recommend its passage.

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WARREN C. BEACH.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CROSBY, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 4048.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4048) to reappoint Capt. Warren C. Beach a captain in the Army and to place him on the retired list in addition to the number now authorized by law, "provided the Secretary of War shall cause the said Capt. Beach to appear before a retiring board of the Army, and it shall appear by report of such board that said Beach was entitled to be so retired on account of disability at the time of his resignation," having carefully examined his case, beg leave to submit the following report:

Capt. Beach entered the Military Academy at West Point June, 1861, and graduated in June, 1865, and remained in the service until June, 1886, at which time, on account of continued ill health he was obliged to resign. He was appointed second lieutenant Fifteenth Infantry June, 1865, and immediately promoted to first lieutenant, and in October, 1873, was promoted to captain of Eleventh Infantry.

Capt. Beach spent substantially his whole term of service in the South and on the southwestern and northwestern frontier. While on duty in the South he contracted malarial fever which nearly resulted fatally, and from the effects of it he has never recovered; by reason of his long and continuous service in the South he has ever since suffered from the effects of this and other diseases incident to his service. When he entered the Army he was a strong, healthy man, free from sickness or disease of any kind. At the time of his resignation and ever since, he was and has been broken down in health; and ever since the date of said resignation and for a long time before he has constantly been under the care of a physician. He was constrained to resign because his condition had become such that he was satisfied he could no longer perform his duties and be of any further benefit to the service.

The evidence of his physicians and comrades in the Army acquainted with the facts shows conclusively that he was broken down in health by reason of his army service for a long time before he actually resigned. The evidence is also conclusive to the effect that he has ever since his resignation been in a very bad condition physically, on account of malarial and other diseases incident to his service in the Army.

It further appears that while Capt. Beach was in the service for twenty-five years his only duty away from troops was three years, from

March, 1882, to March, 1885, during which time he was on the staff of Maj. Gen. W. S. Hancock.

Capt. Beach is highly spoken of as a soldier. He appears to have always been a most painstaking and faithful officer, without a single spot or blot upon his record of twenty-five years' service. He is now in poor health by reason of disease contracted in the line of duty, and your committee feel that it is but an act of simple justice to recommend the passage of the bill with the following amendments:

Insert between the words "that" and "the" in line 8, section 1, the words "before such reappointment;" also insert between the words "shall" and "appear" in line 10, section 1, the word "then."

It will be observed that the bill as amended only authorizes the putting of Capt. Beach on the retired list of the Army on condition that it appear after investigation by a retiring board of the Army that he was at the time of his resignation entitled to be so retired by reason of disability contracted in the service and in the line of duty.

The House Committee on Military Affairs of the Fifty-first Congress, second session, reported favorably substantially the same bill as is herein referred to.

Your committee unanimously report the passage of the bill with the amendments hereinbefore suggested.

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LEANDER C. McLELLAN.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 9134.]

The Committee on War Claims, to whom was referred the bill (H. R. 9037) for the relief of the estate of Leander C. McLellan, report as follows:

Leander C. McLellan, of Cobb County, State of Georgia, in the month of June, 1864, furnished to the military forces of the United States for their use during the late war cotton of the value of \$4,500.

The evidence discloses that Gen. Sherman's army took from the claimant cotton of the value of \$3,000, which was used in the hospitals at Marietta for bedding for the sick and wounded soldiers; that the loyalty of the decedent seems to be fully established.

The committee is of opinion that the claim should be paid, and report herewith a substitute for the bill and recommend its passage.

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CHARLES BACKMAN.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COX, of New York, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 7932.]

The Committee on Claims, to whom was referred the bill (H. R. 7932) for the relief of Charles Backman, have had the same under consideration and report the accompanying bill, which refers said claims to the Commissioner of Internal Revenue for examination and allowance of such amounts as he shall find to have been collected from Charles Backman on distilled spirits, in excess of the amount withdrawn by him, as the same can be ascertained from the statement of facts and records from his office. Proper claims were made out and certified to as being correct by the assessor, assistant assessor, and collector of the districts where the facts occurred.

It appears from the petition of the claimant that prior to the 14th of April, 1869, he had given notice of withdrawal of spirits put in bond by him, and had paid or tendered to the collector an amount of money sufficient to pay for the stamps required for the amount of liquor ascertained by the United States gaugers and inspectors to be actually contained in the packages, the notice of withdrawal of which had been given by him. Prior to that time it had been the uniform custom of the Department to permit such withdrawals upon the payment of tax upon the liquor actually contained in the packages, notice of the withdrawal of which had been given by the owner. In this instance the collector was unable to furnish the requisite number of stamps applied for, and did not furnish them until after the 14th day of April, 1869. On that day the Commissioner of Internal Revenue issued a circular requiring that on the withdrawal of spirits from bonded warehouses tax should be paid on the amount contained in the package at the time it was put in bond and without any allowance for leakage or wastage by evaporation. Obedient to the instructions contained in that circular the collector demanded, and the claimant under protest paid, for the amounts at which the packages were gauged when put in bond. He was thus compelled by the rulings of the Department to pay tax for a considerable amount of spirits which confessedly he did not receive.

The claimant duly filed claims in proper form for the refund of this tax, and those claims were subsequently disallowed under the ruling of the Department based upon the circular of April 14, 1869. It appears, therefore, that the Government of the United States has collected from the claimant taxes upon spirits which he never got and which would not have been assessed had he been furnished, at the time

he requested and paid for the same, with the requisite stamps to remove the spirits from bond. A few similar instances occurred about the time of the issue of this circular, and before the rule in relation to this matter was changed, and in such instances Congress has heretofore authorized and directed the Commissioner of Internal Revenue to examine the cases and to allow a refund of the excessive taxes paid. Such a bill was introduced and passed in the Fifty-first Congress for the relief of George F. Roberts and others, and Congress in connection with that bill examined fully and settled the principle applicable to claims of this character to be that such taxes were improperly levied and should be refunded. The amount claimed by the present claimant is \$5,859.13.

This being the sole purpose of this bill the committee report it back with a favorable recommendation.

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R. D. BECKLEY AND LEON HOWARD.

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Cox, of New York, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1933.]

The Committee on Claims, to whom was referred the bill (H. R. 1933) for the relief of R. D. Beckley and Leon Howard, have carefully considered the same and report:

It is refreshing, indeed, in the experience of this committee, in these modern days of thrift and accumulation, to have such a bill as this referred to them. It stands out like an oasis in a sandy desert—a standing monument—like the honor and integrity of ancient Lot stood out in his day and generation; that there was one man who did not wish all the earth and its possessions. So this claim stands in this generation, and will as an eternal monument, that two men, humble in circumstances, it may be, and of a proscribed color, are to be found who are not on the make in their dealings with the Government.

What are the remarkable circumstances calling for this prelude to the facts sworn in evidence and found to be true, at least *prima facie* so, by your committee? They are these:

Two men of color were in the Forty-eighth Congress employed by the door-keeper of this House, and put upon his roll of employes as laborers at \$60 per month. It is also in evidence that the pay of messengers is \$100 per month. By the order of the door-keeper these men, R. D. Beckley and Leon Howard, were required by the door-keeper of the House to perform each the duty of a messenger, from the 2d day of January, 1884, to the 7th day of July, 1884, in the first session, and again in the second session from the 1st day December, 1884, to the 4th day of March, 1885.

It is known to all members of Congress that the duties of messengers can only be performed while the House is in session or some of its committees are at work. These men did the full duties of a messenger. In addition, they did the duty of a laborer in the House; the evidence showing that at times and hours when the House was not in session they did full duty as laborers in assisting to clean the House, the Hall and corridors, the committee rooms, cleaning spittoons, carrying wood and water, making fires, etc., working in all from twelve to fifteen hours per day, commencing sometimes at daylight and often working late in the night, for all of which they were paid the lesser compensation only of a messenger, to wit, \$60 per month.

This bill, presented in their interest, asks *not* pay for two offices well filled by them, but only for the additional difference between the higher and the lower compensation, amounting to the sum of \$368 each.

As a reward to humble and lowly merit, your committee express the hope this bill will pass by unanimous consent. We add, it has been reported favorably heretofore in the Forty-ninth Congress in both the Senate and House. (See Senate Report No. 1428, first session; see House Report No. 598, first session.)

EXHIBIT A.

We, your petitioners, respectfully represent, that during the first and second sessions of the Forty-eighth Congress, in addition to the duties as laborers, we were assigned to duty by the Doorkeeper as messengers in charge of doors at the entrance to the gallery of the House of Representatives. This service we performed from January 2, 1884, to July 7, 1884, and from December 1, 1884, to March 4, 1885, aggregating nine months and six days. We respectfully ask that the sum of \$368 be allowed each of us, the same being the difference in the pay between a laborer and that of a messenger. In support of our petition, and in verification of the above statement of facts, we respectfully refer to the present assistant doorkeeper.

Respectfully submitted.

R. D. BECKLEY.
LEON HOWARD.

EXHIBIT B.

DISTRICT OF COLUMBIA:

Rozeir D. Beckley, upon his oath says, that he is a resident of Fairfax County, State of Virginia. That during the Forty-eighth Congress he was employed on the Doorkeeper's roll as laborer, at \$60 per month. That from the 2d day of January, 1884, to the 7th day of July, 1884, and from the 1st day of December, 1884, to the 4th day of March, 1885, the doorkeeper of the House put upon him the duty of messenger, which duty he performed in full every day during said time. That the pay of a messenger is \$1,200 per annum, and his duties are only to be done and performed while the House is in session. That in addition to doing the duties of messenger he performed the entire and additional duty of a laborer in hours outside of those he was employed as messenger, making nearly every day twelve to fifteen hours, and more days over twelve than twelve only. That his duty as laborer was to clean rooms and aisles and corridors, clean spittoons, carry water, wood, etc., and generally to aid in doing what was necessary to keep the House end of the Capitol clean and in order. That he states plainly that he did the duty of both laborer and messenger, and in the separate time of each, and he only asks the additional pay of messenger over that of laborer, and not pay for each of said offices, etc.

R. D. BECKLEY.

Sworn and subscribed to before me this 3d day of March, 1890.

[SEAL.]

JOHN H. ROGERS,
Notary Public, District of Columbia.

EXHIBIT C.

STATE OF TENNESSEE, *County of Shelby, ss:*

On this, 20th day of February, 1890, personally appeared before me, the subscriber, clerk of the United States circuit court in and for the county of Shelby and State of Tennessee, Leon Howard, and who, being by me duly sworn according to law, deposes and says that he is a resident of Memphis, in the county of Shelby, State of Tennessee; that during the Forty-eighth Congress he was employed on the Doorkeeper's roll as laborer; that from the 2d day of January, 1884, to the 7th day of July, 1884, and from the 1st day of December, 1884, to the 4th day of March, 1885, he performed the duties of laborer and messenger, working from fourteen to fifteen hours each day, which he received the pay of laborer, and that he believes he is entitled by law to the difference between a laborer's and messenger's pay between the said dates above mentioned.

LEON HOWARD.

Sworn and subscribed to before me this 20th day of February, 1890.

[SEAL.]

JOHN B. CLOUGH,
Clerk United States Circuit Court at Memphis, Tenn.

EXHIBIT D.

DISTRICT OF COLUMBIA, *City of Washington*, ss :

On this 18th day of February, 1890, personally appeared before me, the subscriber, R. D. Beckley, who, being duly sworn according to law, deposes and says, that he is a resident of Fairfax County and State of Virginia; that during the Forty-eighth Congress he was employed on the Doorkeeper's roll as laborer; that from the 2d day of January, 1884, to the 7th day of July, 1884, and from the 1st day of December, 1884, to the 4th day of March, 1885, he performed the duties of laborer and messenger, working from fourteen to fifteen hours each day, for which he only received the pay of laborer, and he believes that he is entitled by law to the difference between a laborer's and messenger's pay between the said dates above mentioned.

R. D. BECKLEY.

Sworn and subscribed to before me this 18th day of February, 1890.

[SEAL.]

JOHN H. ROGERS,
Notary Public, District of Columbia.

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JOHN WALLER

JUNE 7, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Cox, of New York, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 8296.]

The Committee on Claims, to whom was referred the bill (H. R. 8296) to reimburse John Waller, former postmaster at Monticello, N. Y., for money expended in carrying the mails, have carefully considered the same, and report:

A bill in all respects similar to the present bill was introduced into the Forty-eighth Congress, and was referred to the Committee on Claims, and by that committee reported favorably. Your committee adopt the report of that committee and recommend that the bill do pass. Said report is as follows:

The committee find that the said John Waller was, during the months of February, March, April, and May, in the year 1875, the postmaster at Monticello, in the county of Sullivan, and State of New York; and at that time Monticello was at the head of the railroad route, and the mails were received via the Port Jervis and Monticello Railroad, and via the Midland Railroad at Fallsburg station.

The committee further find that during the months aforesaid the said railroads were compelled at various times to abandon their service as carriers of the mail, on account of snow obstructions which prevented running of trains. This stoppage was a serious embarrassment to the business interests of Monticello and the surrounding country. The post-office at Monticello became choked with the letters of adjoining towns. To give relief the postmaster employed O'Neil & Co., who were running passenger sleighs between Monticello and Liberty, in said county, and between Monticello and Middletown, in the adjoining county of Orange, to perform the temporary service of carrying the mails, and thereupon reported the facts to the Second Assistant Postmaster-General.

In providing for this temporary service the postmaster relied upon section 259 of the Rules and Regulations of the Post-Office Department, which had been furnished him for his guidance in the discharge of his duties. That section reads:

“Whenever any contractor fails to commence the service stipulated in his contract, or abandons the same, it is the duty of the postmaster at the head of the route to employ temporary service at the lowest rate possible, and report the facts to the Second Assistant Postmaster-General immediately.”

The postmaster followed these instructions. The railroads were the contractors, they abandoned the service, and the postmaster employed temporary service and made report of the facts as required.

When O'Neill & Co., the temporary contractors, made out their bill and demanded payment of the Second Assistant Postmaster-General, it was refused on the ground that there were no funds applicable to the payment of the claim. Thereupon they brought suit against Waller and recovered judgment against him, and he was compelled to pay, and actually did pay, on the 29th day of March, 1883, the sum of \$426.25.

In addition to this, the said postmaster has paid in part, and incurred obligations to the amount of \$375, for his counsel fees and costs and necessary disbursements in defending suit.

Your committee is of opinion that the claim is a just and meritorious one, and therefore reports the bill back favorably, with a recommendation that it pass.

Affidavit of John Waller.

STATE OF NEW YORK,

County of Sullivan, village of Monticello, ss:

John Waller, of said village, being duly sworn, says that during the months of February, March, April, and May, 1875, he was postmaster at Monticello, and that mails were received via the Port Jervis and Monticello Railroad, and via the Midland Railroad at Fallsburg Station.

That during the months named heavy falls of snow in this section of country blockaded said railroads, and that great quantities of mail matter accumulated at the Monticello post-office.

Defendant further says that in the rules and regulations furnished him for his guidance as postmaster there was a certain provision known as section 259, which was as follows:

"SEC. 259. Whenever any contractor fails to commence the service stipulated in his contract, or abandons the same, it is the duty of the postmaster at the head of the route to employ temporary service at the lowest rate possible, and report the facts to the Second Assistant Postmaster-General immediately.

Deponent further says that, believing it was his duty to attend to the forwarding of the mails which had accumulated in his office as aforesaid, and, relying upon the directions in said section 259, he employed O'Neil & Co., who were running passenger sleighs between Monticello and Liberty, in said county, and between Monticello and Middletown, in the adjoining county of Orange, to perform the temporary service of carrying the mails, and thereafter reported the facts to the Second Assistant Postmaster-General.

That upon the completion of such service the said O'Neil & Co. made out their bill, which was duly presented to the Second Assistant Postmaster-General, and payment demanded, but refused.

That thereupon the said O'Neil & Co. sued this deponent for said services and recovered judgment, and this deponent was compelled to pay, and actually did pay, on the 29th of March, 1883, \$426.25.

That no part of the money thus paid has ever been refunded to him.

JOHN WALLER.

Sworn to before me this 21st day of March, 1884.

PETER E. PALER,
Notary Public.

AMENDMENTS TO REVISED STATUTES.

JUNE 8, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. LYNCH, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany S. 1988.]

The Committee on Indian Affairs, to whom was referred Senate bill 1988, have had the same under consideration and hereby report same back with the following amendments, and, when so amended, recommend that it be passed:

Amend line 9 on page 1, engrossed bill, by inserting after the word "country" the following: "Shall be guilty of a misdemeanor and."

Amend line 10 on page 1 by striking out the word "two," where it occurs after the word "than," and inserting in lieu the word "one." Also strike out the word "and" after the word "years" in the same line, and insert the word "or."

Amend line 11 on page 1 by inserting after the word "offence" the following: "Or by both fine and imprisonment, in the discretion of the court."

Add after the word "witnesses," in line 11 on page 2, the following:

All complaints for the arrest of any person or persons made for violation of any of the provisions of this act shall be made in the county where the offense shall have been committed; or if committed upon or within any reservation not included in any county, then in any county adjoining such reservation; and if in the Indian Territory, before the United States court commissioner, residing nearest the place where the offense was committed, who is not for any reason disqualified; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county, or before any magistrate or judicial officer authorized by the laws of the State in which such reservation is located to issue warrants for the arrest and examination of offenders by section 1014 of the Revised Statutes of the United States. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the district court of the United States, according to law.

Wherever any person charged with any offense against sections 2139, 2140, or 2141 of the Revised Statutes, as hereby amended, shall have been arrested and held to bail as in said sections provided he may go before any United States commissioner in the district in which such offense is alleged to have been committed, or the district judge of the district at chambers, and enter a plea of guilty, and in all such cases such United States commissioner or district judge at chambers shall be, and is hereby, vested with full jurisdiction, power, and authority to receive such plea and to pronounce sentence in accordance with provisions of said sections with the same force and effect as though such plea had been made and sentence pronounced at a term of a district court. In all such cases it shall be the duty of such commissioner or district judge to forthwith make a record of conviction and file the same with the clerk of the district court, or court having jurisdiction as aforesaid, and such record of conviction shall, upon filing, be and become a record of such court and shall have the same force and effect and the proceedings thereunder shall be the same as in cases of conviction in said court.

The committee are of the opinion that the punishment inflicted was unnecessarily severe for the offense, and that its severity in many cases deterred courts and juries from convicting or punishing at all. Therefore the committee recommends that the term of imprisonment be changed from two years to one, and that the fine and imprisonment shall not, in all cases, be inflicted as one penalty. Hence the amendment leaving it to the discretion of the court when to impose a fine, when a penalty, and when to impose both. This is the usual language of penal statutes vesting a wholesome discretion in the court, and we think it ought to be applied in this case.

It is further recommended because by reducing the penalty from two years to one, according to the practice in some States, it relieves the prosecution from presenting the case to a grand jury and proceeding by indictment, permitting the same thing to be accomplished by information, because it reduces the grade of the offense to a misdemeanor. This will be a great saving of expense to the Government by avoiding the necessity for a grand jury, and in many cases, as will appear by a subsequent amendment, avoiding a trial by affording the defendant an opportunity to plead guilty if he so chooses.

The next amendment, requiring that all arrests be made in the county where the offense was committed, or in a county adjoining the reservation, will prevent one of the most flagrant abuses of the processes of the United States court that prevails anywhere.

Usually the reservations are in remote parts of the State, while the district court is held in the largest and most populous city, in most cases from one to three hundred miles distant.

The practice has invariably been to procure a warrant from some court commissioner residing where court is held. Armed with that warrant and subpœnas, the marshal proceeds to arrest the defendant and bring him and the witnesses from one to three hundred miles for the purpose of examination. If not guilty, the defendant must bear his own expenses home and pay his witnesses in most cases, if he had any. If held to bail, he is among strangers and unable to furnish it. The costs are always heavy.

This amendment will make the practice in those cases conform to the State practice, and will to a great extent, as was said before, prevent the abuse of processes. We believe it necessary to make this provision mandatory. Under the United States statutes it has always been proper and competent to institute criminal proceedings before any magistrate or justice of the peace in any State, but we have been unable to learn of a single instance where an arrest was made otherwise than before a court commissioner residing at the place of holding court, and we believe it has always been done in the interest of the United States marshal and his deputies, whose fee bills in those cases are usually exorbitant.

The next amendment proposed by the committee is intended to further facilitate the punishment of offenders and save to the Government a vast amount of unnecessary cost and expense. It provides that any person held to bail for either of the offenses may, in his discretion, appear before any United States court commissioner or the district judge at chambers, and by his own voluntary act plead guilty to the offense charged, and authorizes the court commissioner or district judge at chambers to impose the penalty of the law upon such person with like force and effect as if convicted by the verdict of a jury.

This provision will enable this class of cases to be disposed of promptly and without great cost to the Government. It will, in a majority of

cases, avoid the necessity of presenting the case before a grand jury in the first instance, and, in a majority of cases, will obviate a trial of the case in court, and thus, we venture to say, will be a saving of many thousands of dollars a year to the Government by reducing the fees of the marshal, saving the expense and travel of witnesses, and fees of jurors in the trial of those cases.

Those two last amendments, as to the place of trial and enabling the defendant to plead guilty, were submitted to J. S. Stanley, an attorney from Atoka, in the Indian Territory; H. H. Hibbard, attorney at Vinita, in the Indian Territory; A. P. McKellop, delegate from the Creek Nation, Muscogee, and J. T. Hill, attorney for the Kickapoo Nation at Guthrie, Okla., each of whom has had a large and extensive experience in the prosecution of the offenses stated in this bill, and they all not only recommend but urge the passage of these two amendments in the interest of justice and the welfare of the Indians.

Their experience in the prosecution of those cases accords entirely with the experience of many members of the committee, as to the abuse of the process of court as a means of earning large fees. It is within the knowledge of many members of the committee, and fully corroborated by those gentlemen, that in perhaps a majority of those cases hundreds of miles of travel have been made and charged that was wholly unnecessary, and that wherever the defendant was responsible the penalty of the court was the least part of the punishment. And in the other cases where the defendants are guilty, but unable to pay, and where the defendants are acquitted, and the expenses paid by the Government, the costs are always about double, if not treble, what they would be if these amendments prevail.

Under those amendments the prosecuting officer may make the complaint before any judicial officer and thus protect the prosecution by bringing the case before an officer in whom he has confidence, and the defendant, on the other hand, if he elects to plead guilty, must go before a court commissioner appointed by the district judge who, it is presumed, will appoint competent and reliable men to that position.

Your committee desire to protect the prosecution in all cases, and to provide for a speedy and fair trial of the defendants in those cases in the same manner as like offenses against the laws of the State.



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JAMES M. WILLBUR.

JUNE 8, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BULLOCK, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 466.]

The Committee on Claims, to whom was referred the bills (S. 466 and H. R. 975) authorizing the Secretary of the Treasury to adjust and settle the account of James M. Willbur with the United States, and to pay said Willbur such sum of money as he may be justly and equitably entitled to, submit the following report:

Your committee recommend that H. R. 975, heretofore favorably reported, do lie upon the table, and that S. 466, for the same purposes, be substituted therefor, and that it do pass.

○

NANCY E. DAY.

JUNE 8, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BULLOCK, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 2271.]

The Committee on Claims, to whom was referred the bills (S. 2271 and H. R. 2479) for the relief of Nancy E. Day, administratrix of the estate of James L. Day, deceased, have carefully considered the same and report:

Your committee recommend that H. R. 2479 do lie upon the table, and that S. 2271 be substituted therefor and that it do pass.

Your committee append the Senate report No. 307, which we adopt as a part of this report.

The Committee on Claims, to whom was referred the bill (S. 2271) for the relief of Nancy E. Day as administratrix of the estate of James L. Day, deceased, have carefully examined the same, and find that the claim has been before the committee in the Fiftieth Congress and again in the Fifty-first, and that on each occasion the report thereon was favorable, and the bill providing for its payment was passed by the Senate.

The claim was, previous to its introduction here, before the Court of Claims, and the findings of law and fact were in favor of the claimant. The present examination by the committee leads to the same result as before, and in recommending the passage of the bill the committee submit as a part of their report a former report adopted by the committee in the Fifty-first Congress.

Senate Report No. 318, Fifty-first Congress, first session.

Mr. PASCO, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1034.]

The Committee on Claims, to whom was referred the bill (S. 1034) for the relief of Nancy E. Day, as administratrix of the estate of James L. Day, deceased, submit the following report:

The claimant's intestate, James L. Day, was a mail contractor on postal route No. 8151, from New Orleans to Mobile. His contract extended from July 1, 1858, to June 30, 1862. The stipulations of the contract appear in the findings of fact given below.

The service was discontinued on May 24, 1861, and the Department declined to allow the one month's extra pay according to the stipulation, but no final action was taken. The one month's pay "on the amount dispensed with" is \$3,041.66, according to the contract. On February 11, 1885, the Acting Postmaster-General referred the matter to the Court of Claims in accordance with the second section of the act of Congress approved March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government."

After a full hearing of the case on its merits the court found in favor of the claimant, who is the administratrix of the estate of the contractor.

The case is published in volume 21, Court of Claims Reports, page 262.

The findings of fact and conclusion of law, with the opinion of the court, are as follows:

FINDINGS OF FACT.

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

On the 11th day of February, 1885, the Acting Postmaster-General transmitted the above-entitled cause to this court, under the authority of an act of Congress approved March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government."

II.

On the 24th day of April, 1858, the United States entered into a contract with James L. Day, of Norwich, in the county of New London and State of Connecticut, the claimant's intestate, for the transportation of the mail on postal route No. 8151 from New Orleans, in the State of Louisiana, to Mobile, in the State of Alabama, and back, daily, in low-pressure steam-boats, at a compensation of *thirty-two thousand five hundred dollars per year*, for and during the term commencing the 1st day of July, in the year 1858, and ending with the 30th day of June, in the year 1862.

III.

The said contract so as aforesaid entered into between the United States and the said James L. Day, contained, amongst others, the following stipulation or agreement, to wit:

"It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may increase the service or change the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional service required; but the contractor may, in case of increased service or change of schedule, relinquish the contract on timely notice, if he prefer it to the change; also that the Postmaster-General may curtail or discontinue the service in whole or in part, he allowing one month's extra pay on the amount dispensed with."

IV.

That on the 24th day of May, 1861, the Postmaster-General, acting for and in behalf of the United States, and under the authority contained in the said contract, discontinued the service on said postal route No. 8151, and wholly annulled the said contract.

V.

At the dates therein stated the following correspondence between the decedent and the Department took place:

NORWICH, CONN., July 10, 1861.

To the POSTMASTER GEN'L,
P. O. Department, Washington:

DEAR SIR: I received on the 1st June, under date of the 24th May, official notice to discontinue the service on route No. 8151, and that the contract was annulled. This course on the part of the Department (though doubtless rendered necessary through the present state of the country) bares hard on us, who have invested a large amount of money in boats to enable us to carry out our contract, and, 1st, in view of the balance due us on the last quarter, which would have ended yesterday, are we not entitled by our contract to 30 days' pay additional after notice is given to annul the service by the Department, as a small compensation to the contractor for discontinuing the service? This, I hope, if correct, you will allow me at the proper time; and in view of the ballance due me on quarter ending the 31st March, '61, I hope the Department will forward the amount as early as convenient, and oblige yours, very truly,
JAMES L. DAY.

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., July 19, 1861.

JAMES L. DAY,
Norwich, Conn.:

In answer to your letter of 10th instant, I have to inform you that the Postmaster-General declines to allow one month's extra pay on the order of discontinuance of the service on route No. 8151, from Mobile, Ala., to New Orleans, La. In no instance has this been allowed in the order of discontinuance in the seceded States.

G. W. McL.

The records and files of the Post-Office Department do not show that any other decision such as is mentioned in the letter of July 19, 1861, was made by the Department. One month's pay on "the amount dispensed with" is \$3,041.66.

CONCLUSION OF LAW.

Upon the foregoing findings the court decides, as a conclusion of law, that the claimant is entitled to the sum of \$3,041.66.

OPINION.

WELDON, J., delivered the opinion of the court:

The subject-matter of this claim was referred to this court by the Postmaster-General under the act of March 3, 1883 (chap. 116, 22 Stat. L., 485).

The facts disclosed by the findings are: That in the year 1861 the decedent was a mail contractor, having agreed with the United States to transport the mail on route No. 8151 from Mobile, Ala., to New Orleans, La., for a period of four years, commencing on the 1st day of July, 1858, and ending on the 30th of June, 1862.

On the 24th of May, 1861, the Postmaster-General discontinued the service and annulled the contract. The petition is filed to recover from the United States the sum of \$3,041.66, that being one month's pay, computing according to the terms of compensation provided for by the agreement. Upon the discontinuance of the service and cancellation of the contract, the decedent wrote to the Department, as shown by finding fifth, to which the Department replied, as is shown by said finding.

It is insisted by the counsel for the defendants that the fifth finding shows a presentation of the matter on the part of the decedent in the year 1861; and a rejection of it by the Department so as to bring the case within the decisions of this court as to the power of the head of a Department to review and consider a claim determined and rejected by his predecessor.

The doctrine of *res judicata* as being applicable to the jurisdiction of the head of a Department is fully recognized by this court in several adjudications. (*Lavalette Case*, 1 C. Cls., 149; *Jackson Case*, 19th, 504; *The State of Illinois v. United States*, 20 C. Cls., 342.) The doctrine of these decisions is found in the case of the *United States v. Bank of Metropolis* (15 Pet., 401), and also in the report of the Judiciary Committee of the Senate, June 14, 1878.

If the facts, as shown by the record, bring the case at bar within the law of those cases, then the contention of the Government is well-founded and the petition should be dismissed. It is not pretended that any mistake was made arising from errors of calculation, or that any new and substantial element of fact is now presented that was not known to the Department at the time. The correspondence set forth in the fifth finding took place between the decedent and the Department, but the claimant assumes the position that there has been no adjudication by the Postmaster-General, which in legal effect prevents the allowance by the incumbent officer of the claim made by the petition.

A very serious question might have arisen as to the claimant's right of recovery upon the merits of the claim, as a legal liability against the United States, but for the decision of the Supreme Court in the case of *Reeside v. The United States* (8 Wall., 38).

By the terms of the contract the Postmaster-General had the right to "curtail or discontinue the service in whole or in part, he allowing one month's extra pay on the amount dispensed with." The right of discontinuance was a right secured to the Department without reference to any reason or necessity for the same; and the measure of damages to the contractor, because of such discontinuance, was fixed by the terms of the contract. Historically it is known to the court the reason of such discontinuance, and the inability of the decedent to perform the service of a mail contractor on the route named in the petition, on the 24th of May, 1861; but the condition of the parties is immaterial in the light of the law announced in the *Reeside* case.

The only question to be determined is, whether there has been such an adjudication as constitutes in law a decision of the Department making the claim an adjudged matter in such Department. Do the facts bring the case within the reason and spirit of the administrative law established and recognized by the decisions? There were no rules prescribed by the Department defining the manner in which claims should be presented, nor any prescribed formula in which the decisions of the Department were preserved in the form of judgments and decisions; and we are left to determine from the substance and force of acts of the parties whether the matter has been settled by a head of a Department so as to prevent an investigation by his successor. The findings show that the decedent, on the 10th of July, 1861, wrote to the Postmaster-General, "Are we not entitled by our contract to the thirty days pay additional after notice is given to annul the service by the Department?" This seems to be a mere inquiry as to the right of the party under the contract in consequence of the discontinuance of the mail service.

To that inquiry the Department replied "that the Postmaster-General declines to allow one month's extra pay on the order of discontinuance. * * * In no instance has this been allowed in the order of the discontinuance in the seceded States." It might be inferred from the phraseology of the answer that for the time being it had become the policy of the Government not to allow for discontinuance in the Southern States where the service was discontinued because of the disturbed condition of the country; but it does not appear that other decisions were made establishing a policy on the part of the Government in relation to discontinued mails in the seceded States. It does not appear that the decedent, either in person or by agent, was ever heard before the Department in defense of his claim, or that any investigation was ever made or decision announced except the letter of the Department in answer to the inquiry as to whether the contractor was not entitled to one month's pay.

While we have no disposition to qualify or restrict the doctrine of what we have heretofore decided in cases like the one at bar, we have no disposition to extend the doctrine so as to include transactions not falling clearly within the law of those cases.

It is the opinion of the court, that the findings do not show an adjudication of the claim by the Postmaster-General in 1861, so as to remove it from the jurisdiction and

control of the Department at this time; and there being in law no answer to the claim on its merits, it is the conclusion of the court that the claimant is entitled to be paid the sum of \$3,041.66, and the clerk will certify to the Post-Office Department a copy of the findings of fact, the conclusion of law, and the opinion of the court.

The findings and opinion of the court were transmitted by the clerk to the Postmaster-General April 30, 1886, and no provision has yet been made for the payment of the amount.

It seems that the contractor was, when he entered into the contract, and during his life-time, a resident of the State of Connecticut, where his widow, the administratrix, still resides, and their loyalty to the United States during the late war has never been questioned.

The penalty was no doubt based upon the idea that the contractor would necessarily suffer loss by the discontinuance of the service after investing a large amount of money in boats and incurring expenditures for running the same.

The sum named was the measure of damages agreed upon in the contract, and the record discloses no good reason why the findings of the court should not be carried out.

This case was before the Fiftieth Congress, and after a favorable report from this committee a bill identical with that now before us was passed in the Senate and was favorably considered by a committee of the House of Representatives, and was on the Calendar there at the close of the last session.

A review of the case has brought the committee to the same conclusion that was before reached, and the passage of the bill is recommended.

JAMES H. DENNIS.

JUNE 8, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COX, of Tennessee, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 597.]

The Committee on Claims, to whom was referred the bill (S. 597) to carry out the findings of the Court of Claims in the case of James Harvey Dennis, have considered the same and report:

There is pending before the committee a similar bill (H. R. 815) of the same title and for the same purpose which it is recommended lie on the table, and that S. 597 be substituted therefor and that it do pass.

Your committee append hereto the Senate Report No. 512, which we adopt.

[Senate Report No. 512, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 597) to carry out the findings of the Court of Claims in the case of James H. Dennis, make the following report:

The bill calls for an appropriation of \$29,638, being the sum found by the Court of Claims due the claimant on account of certain contracts for the improvement of the Tennessee River.

September 21, 1888, by resolution of the Senate, bill S. 3571, entitled "A bill for the relief of James H. Dennis," then pending in the Senate, was referred to the Court of Claims in pursuance of the provisions of "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887, to find and report to the Senate the facts bearing upon the merits of the claim, including the loyalty of the claimant, and all other facts contemplated by the provisions of said acts.

The bill thus submitted to the Court of Claims called for an appropriation for the payment of said Dennis in the sum of \$259,700 on account of work done upon the Tennessee River, under contracts, written, oral, or implied, between the years 1868 and 1872, in addition to any sums or sum that may have been paid to him.

Pursuant to the resolution of the Senate, upon petition duly presented, evidence was taken and a finding of facts was made by the Court of Claims, a certified copy of which was filed with the President of the Senate March 3, 1890.

From the findings it is made clearly to appear that the claimant was a loyal citizen of the United States; that between the months of October, 1868, and October, in the year 1870, the claimant entered into certain contracts in writing with the United States for the improvement of different places on the Tennessee River; that the original contract was altered from time to time by oral agreements between the officer representing the United States and claimant; that the contracts originally let to other parties by the Government were by mutual consent assigned to claimant for the purpose of performance, and that subsequent to the original contract a second written contract was entered into between the Government and claimant respecting improvements upon the river.

Pursuant to these several contracts plaintiff, under the supervision of the proper

engineering officer of the Government, performed work until April, 1872, when, failing to give a bond exacted of him by the officer in charge, the claimant was notified that the several contracts entered into were canceled and he notified to discontinue work. On account of the various improvements made by the claimant, there was allowed and paid to him \$105,224.57, certain per cents of the amount being withheld. This per centum, amounting to \$19,229.79, was not paid to the claimant until January, 1874, and in the collecting of the same he was compelled to pay, as found by the court, \$4,000 in counsel fees; that claimant at the time of entering into these several contracts with the Government was worth from \$25,000 to \$30,000; that upon discontinuance of the work he was left in a state of insolvency. In most of the items presented in his petition the court fails to find favorable to the claimant, solving obscure or doubtful proofs against him.

At what is termed Suck Bar the court finds the whole amount of rock removed to have been 26,369 cubic yards; that the estimates of payment for this work, made by the officer in charge, were as follows:

6,100	cubic yards, at 75 cents.....	\$4,575.00
9,532	cubic yards, at \$1.15.....	10,961.80
9,538.85	cubic yards, at \$3.75.....	35,770.68
25,170.85	.....	51,307.48

It finds the difference between the work done and that paid for 4,199 cubic yards, and that this additional work was of the same character and equally difficult and expensive as that for which the allowance of \$3.75 per cubic yard was made, and therefore finds a reasonable value for the same \$15,746.

The court also finds that on the work done at what is called Boiling Pot 13,500 cubic yards were removed, and pursuant to the contracts paid for at the rate of \$1.50 per cubic yard, and that upon the order of the officer in charge claimant made a further excavation and removal of 2,400 cubic yards of the same character of work, and worth at the contract price \$3,600, for which payment had not been made; that at what is known as Buck Island claimant constructed a riprap dam, which he alleged contained 2,666 cubic yards of rock, for which payment was to have been made at the rate of \$2.25 per cubic yard. He was allowed, by reason of an erroneous measurement, for but 2,000 yards at this rate. The court finds that by a proper method of measurement the dam contained 2,400 cubic yards of rock, for which, according to the contract, he should have received payment at the rate of \$2.25 per cubic yard, and that there is still due him thereon \$900.

It is also shown in the findings that on the 31st of October, 1868, the claimant made a contract with the Government to do certain work in the improvement of the Tennessee River at a point known as Seven-Mile Island and Buck Island, and that after making extensive preparations for carrying on the contract he received notice from the engineer officer in charge that the work at this point was abandoned and that the work would be transferred to Colbert Shoals.

The amount of work done at Colbert Shoals was 3,362 cubic yards, at \$2.25 per yard. The court finds the work at Colbert Shoals more difficult than that at Buck Island and Seven-Mile Island. The whole amount of work under the contract at Buck and Seven-Mile islands, including a wall, was 11,357 cubic yards. Amount done at Buck Island and Colbert Shoals, 5,762 cubic yards.

Estimating the cost of preparation made at Seven-Mile Island for the prosecution of the work which became a useless expenditure in consequence of the abandonment at that point and the difference in expense of the works done at the different points, the court renders a finding of \$2,408 in favor of the claimant in excess of all payments made.

It is alleged in addition by claimant that at Colbert Island he built two riprap dams containing 15,000 cubic yards, worth \$4 per cubic yard, and did other work of a value of \$175; that he built still another dam containing 1,000 yards of riprap and 2,300 of rubble dam, worth, respectively, \$4 and \$6 per cubic yard; that the claimant was at said place allowed in the aggregate 11,439 cubic yards of riprap, for which payment of \$16,382.53, including the retained percentage before mentioned, was made him. Of this amount 8,911.76 yards were paid for at the price of \$1.20 per yard and the remainder at the price of \$2.25 per yard. If the measurement had been made according to the rule of one and eighty-hundredths instead of one and fifty-hundredths for the difference between solid and loose stone, as the court finds should have been done, it would have made the yards at \$1.20, 10,693 instead of 8,911.76, and the yards at \$2.25, 3,033 instead of 2,527.24, making a balance of 1,782 yards at \$1.20 per yard and 505 yards at \$2.25 per yard, amounting in the aggregate to an increase of \$2,706, for which payment should be made the claimant.

At the point known as Bee Tree Shoals it is alleged the claimant built 3,744 yards of riprap, which was worth \$5 per cubic yard, aggregating the sum of \$18,720.

At this point, by the officer in charge, there was estimated and allowed 1,911½

yards of riprap, 400 yards at \$1.20 per yard, and 1,511½ yards at \$2.25 per yard, aggregating \$3,880.87. The court finds the same error occurred in estimating this work as the foregoing, and that estimating the work according to the standard of one hundred and eighty instead of one hundred and fifty the result is 480 yards at \$1.20 per yard and 2,890 yards at \$2.25 per yard.

The court finds that the claimant has paid the sum of \$4,000 as expenses in attorney's fees in collecting from the Government the retained percentage, amounting to \$19,229.79, the amount admitted by the officer in charge of the work to have been found due him, which was not paid until January, 1874.

Your committee do not, however, feel warranted in recommending the repayment of such expenses and counsel fees.

Your committee therefore recommend that the bill be amended so as to allow the claimant the sum of \$25,638.

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ANDREW B. KNAPP.

JUNE 8, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ROCKWELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 2592.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 2592) for the relief of Andrew B. Knapp, having had the same under consideration, submit the following report:

It appears from the evidence submitted and the military record of said soldier that during the month of January, 1863, his regiment, the One-hundred and second New York Volunteers, was stationed at Fairfax, Va., and as said regiment was about to move this soldier was sent to Washington, D. C., by Dr. Dunn, brigade medical director, to be treated for acute laryngitis.

While in Washington claimant met one F. G. Russell, who desired to visit a sick friend in the Mansion House Hospital at Alexandria, Va. Accordingly passes to Alexandria were secured by both Knapp and Russell from the provost marshal for one day; not being able to get to the boat to return the same evening, the dates of the passes were changed to be good on the following day. For this forgery, as it was called, the said Knapp was dismissed from the service.

In view of the small degree of offense and the faithful services of this soldier, your committee are of the opinion that this relief asked for in the bill should be granted and therefore recommend that the bill do pass.

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REPORT OF THE

COMMISSIONER OF THE GENERAL LAND OFFICE
TO THE SECRETARY OF THE INTERIOR

FOR THE YEAR ENDING 1904

REPORT

OF THE

COMMISSIONER OF THE GENERAL LAND OFFICE
TO THE SECRETARY OF THE INTERIOR
FOR THE YEAR ENDING 1904

The following is a summary of the work of the General Land Office during the year ending 1904. The work of the office has been largely in the nature of routine administration, and has consisted of the receipt and distribution of land claims, the preparation of maps and plats, and the management of the public lands. The work of the office has been carried on in accordance with the provisions of the laws governing the public lands, and has been conducted in a manner which has secured the most efficient and economical management of the public lands.

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J. R. EGGLESTON.

JUNE 8, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BULLOCK, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 4709.]

The Committee on Claims, to whom was referred the bill (H. R. 4709) for the relief of J. R. Eggleston, of Hinds County, Miss., have carefully considered the same and report:

The facts are, in brief, that J. R. Eggleston was one of the lieutenants on board U. S. S. *Wyandotte* when she captured the slaver *William* and released the 700 slaves on board on coast of Cuba. The said barque *William* was condemned as lawful prize in the admiralty court of Key West, Fla. It was adjudged by said court that said Lieut. Eggleston was entitled to \$320 as prize money.

Said amount of money is now in the Treasury of the United States to the credit of the said Eggleston, and can not be paid to him without an act of Congress.

As it is conceded that said Eggleston did render the service claimed, and was by the admiralty court's decision entitled to the same, your committee are of opinion that said bill is founded on equity and justice, and as said money must remain in the United States Treasury without being commingled with other moneys, and the same is justly due to said Eggleston, your committee are of opinion that said bill should be passed, and so recommend.

TREASURY DEPARTMENT, OFFICE OF THE FIRST AUDITOR,
Washington, D. C., January 22, 1892.

SIR: Acknowledging the receipt of your letter of the 17th instant, making inquiry relative to claim of J. R. Eggleston, of Raymond, Miss., for \$320, amount of "head money" alleged to be due him from the Government as his share of bounty allowed officers and crew of U. S. S. *Wyandotte* for capture of the slaver *William* in 1860, you are informed that his case was before this Bureau for action in 1885 and 1886 and was referred by the Secretary of the Treasury, at the request of this office, to the (then) Attorney-General of the United States for his opinion, wherein he stated that claims of this character could not be paid without action of Congress. A copy of the opinion is herewith inclosed.

Respectfully,

GEO. P. FISHER,
Auditor.

Hon. CHARLES E. HOOKER,
House of Representatives, Washington, D. C.

DEPARTMENT OF JUSTICE,
Washington, June 17, 1886.

SIR: Your communication of the 7th May ultimo, presents the following case for an opinion:

In 1860 one Eggleston, then an officer in the Navy of the United States, became entitled, as such officer, to a certain sum of money, being his share, according to the scheme of distribution prescribed by law, of the proceeds of a slaver captured off the coast of Cuba.

The amount thus due was certified to the Treasury Department by the Secretary of the Navy on the 19th September, 1860, and on the 20th of the same month the claim was referred to the First Auditor. That officer took no action thereon.

In 1861 Eggleston resigned his commission in the Navy and served in the Confederate navy.

Upon this state of facts it is asked whether the President's proclamation of amnesty of the 25th December, 1868, annulled so much of the joint resolution of the 2d March, 1867 (14 Stat. 571, and Sec. 3480 Rev. Stat.), "as forbids accounting officers settling claims existing prior to the 13th day of April, 1861, in favor of participants in the late insurrection or rebellion and against the United States."

Congress has said by this joint resolution that money in the Treasury shall not be applied to the payment of claimants "who promoted, encouraged, or in any manner sustained the rebellion," or who, during such rebellion, were not "known to be opposed thereto and distinctly in favor of its suppression," and that no pardon theretofore granted or thereafter to be granted should authorize any such payment.

The Constitution of the United States (Art. I, sec. 9) provides that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law * * *," and Congress has the undeniable right to annex such conditions to the payment of the public money as it sees fit. It has exercised that right by the joint resolution of the 2d March, 1867 (*supra*), and the conditions so prescribed must be respected unless it can be shown that one of the consequences of a pardon in a case like the present is to enable the grantee of it to draw money from the Treasury in a way different from that required by Congress.

This view as to the relation of a pardon to the joint resolution of the 2d March, 1867, has been distinctly laid down by the Supreme Court of the United States in the recent case of *Hart v. United States* (118 U. S., 62), affirming a judgment of the Court of Claims. If this is the law in a case like Hart's, where the claimant was pardoned some time before the joint resolution was passed, it must be so, *a fortiori*, in a case like the present where the pardon was granted after the joint resolution became law.

As a consequence, it must be replied to your question that the proclamation of amnesty of the 25th December, 1868, did not defeat the intent of the joint resolution of the 2d March, 1867, as to the claimant Eggleston, whose claim can not be paid without an act of Congress authorizing it.

Very respectfully, your obedient servant,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE TREASURY.

O

CHAUNCEY M. LOCKWOOD.

JUNE 8, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SMITH, of Illinois, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1440.]

The Committee on Claims, to whom was referred the bill (H. R. 1440) for the relief of the legal representatives of Chauncey M. Lockwood, having had the same under consideration, report as follows:

This claim seems to have been favorably reported in the Senate seven times and passed that body three or four times. It has been several times favorably reported in the House and there does not seem to have ever been an unfavorable report made thereon.

The facts are so fully set forth in Senate report No. 122, made in the Fifty-first Congress, that your committee here adopt said report, and recommend that the bill do pass.

Senate Report No. 122, Fifty-first Congress, first session.

 JANUARY 20, 1890.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Post-Offices and Post-Roads,
submitted the following

REPORT:

[To accompany bill S. 928.]

The Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 928) for the relief of Chauncey M. Lockwood or his legal representatives, having had the same under consideration, respectfully report as follows:

Five favorable reports have been made heretofore from this committee in reference to this claim, and no adverse reports. The facts are fully and correctly set out in a report, No. 49, second session Forty-second Congress, and which is now adopted as the present report of this committee. It is as follows:

The Committee on Post-Offices and Post-Roads, to whom was referred Senate bill 241, for the relief of Chauncey M. Lockwood, report as follows:

That on the 9th day of March, 1868, the Postmaster-General advertised for proposals to carry the mail over route No. 16637 from Salt Lake, in Utah Territory, to The Dalles, in the State of Oregon, a distance of 875 miles, six times a week, and back. On the 13th day of June, 1868, the bids were opened, and that of C. M. Lockwood being the lowest, was accepted, and the contract awarded to him for the sum of \$149,000 per annum, the service to commence on the 1st day of October, 1868, and terminate on the 30th day of June, 1870. On the 24th day of August, 1868, Mr. Lockwood executed a contract, with sureties, as required by law, and carried the mails from the 1st day of October, 1868, to the 17th day of June, 1869, when the service was curtailed and made to begin at Indian Creek, or Kelton, a point on the Central Pacific Railroad, and the sum of \$18,732 per annum was deducted from the pay, leaving it at \$130,278 per annum.

On the 13th day of June, 1868, when the contract was awarded to Mr. Lockwood, an act of Congress, approved March 25, 1864, was in force, whereby it provided "that all mailable matter which may be conveyed by mail westward beyond the western boundary of Kansas, and eastward from the eastern boundary of California, shall be subject to prepaid letter-postage rates." The object of this law was to compel all printed mailable matter to be carried in sea-going steamers by way of the Isthmus of Panama to San Francisco, and thus lessen the weight of the overland mails. On the 25th of June, 1868, an act of Congress was approved repealing the above recited section, to take effect on the 30th day of September, 1868, and the consequence was that all printed mailable matter, which before that time had been transported by sea to the Pacific coast, as well as that sent eastward from the Pacific States and Territories, was transferred to the overland route, and its aggregate bulk and weight vastly increased. The same effect followed the repeal of that law on the route from Salt Lake to the Dalles, though not to the same extent as on the overland route to California and Nevada.

It may not be inappropriate here to state that on the 13th day of June, 1868, the same day the contract was awarded to Mr. Lockwood to carry the mails from Salt Lake to the Dalles, the Post-Office Department entered into a contract with Carlton Spaid for carrying the mails from Cheyenne, in Dakota Territory, to Virginia City, in Nevada, for the sum of \$335,000 per annum. When Congress, on the 25th day of June, 1868, repealed the act of March 25, 1864, to take effect on the 30th of September following, Mr. Spaid refused to comply with his contract, and the Post-Office Department, in order to have the mails properly carried, was under the necessity of accepting, and on the 21st day of October, 1868, did accept, the proposition of Wells,

Fargo & Co., who offered to "carry the mails daily for one year from date, or until the two railroads meet, at the rate of \$1,750,000 per annum, subject to reductions pro rata for every section of fifty miles of railroad completed and reported to the Post-Office Department ready to carry the mails."

Charges were afterward made that the Postmaster-General acted improperly in entering into the contract with Wells, Fargo & Co. for so large a sum of money over and above the amount agreed to be paid to Carlton Spaid; but upon an investigation of the matter by the Committee on Public Expenditures, in the House of Representatives, on the 27th day of February, 1869, that officer was exonerated from all the accusations preferred against him. Among other things, that committee, in their report, say:

"On June 25, 1868, Congress repealed the act of March 25, 1864, to take effect on the following September 30, and thereby opened this route to the entire mails of the Pacific coast. This was done against the earnest remonstrance of the chairman of the Committee on the Post-Office and Post-Roads of the House (Mr. Farnsworth), who professed to represent the views of the Post-Office Department. He objected to the repeal of the law that it would vitiate or interfere with the contract already made, and would probably cost the Government at the rate of \$900,000 a year for the whole distance, by throwing so much mail matter upon this difficult and expensive route.

"It very soon became manifest that Mr. Spaid would not carry out his contract according to its terms. Indeed, he could not be expected to do it. His bid was based upon the letter mail alone, and the stipulated compensation was adequate to that. He had bound himself to carry all the increase, but when that increase was caused by the act of the Government after the date of his contract, and amounted to 400 or 500 per cent., he was certainly not morally bound to fulfil his contract, if, indeed, he could be legally held to it.

"Under these circumstances two very proper courses of conduct were open to Mr. Spaid: first, to throw up his contract as soon as the act of Congress came to his knowledge; or, second, to carry the mail with the increase and to look to Congress for an appropriation to pay him the increase."

When it was proposed to repeal the act of March 25, 1864, Mr. Farnsworth, the chairman of the Committee on Post-Offices and Post-Roads, earnestly opposed the measure, for the reason that its repeal would greatly increase the cost of carrying the mails. His remarks during the discussion, as reported in the Daily Globe of June 20, 1868, are as follows:

"Mr. FARNSWORTH. If I can have the attention of the House for a moment I will state briefly the points about this bill. The House passed a bill removing the restriction which was imposed by the act of 1864, I believe, which required that printed matter should pay letter-rates between the western boundary of Kansas and the eastern boundary of California, where it had to be carried by stages, except that newspapers, magazines, and periodicals are carried there, as everywhere else, to regular subscribers from the office of publication. The present contract expires in the fall, in October, I believe. The Senate have amended the bill so as to make it take effect in the fall, and sent it back to the House.

"Upon examination of the bids put in at the Department for carrying the mails for the next four years, and on inquiry with reference to the intentions of the parties who have bid for carrying the mails--the bids for the letter-mails being already in--we find this fact: that the difference of expense will be about \$1,000,000 if we remove this restriction and allow the publishers of books, magazines, etc., to send by mail their packages to dealers in the various places in these remote territories. The House will see at a glance that they would load down the stage-coaches and make the mails very bulky and heavy, and the contractors can not afford to carry this immense load of matter at the same rate at which they are now carrying the letters and newspapers, etc., to the regular subscribers.

"The Committee on the Post-Office and Post-Roads considered this question, and also, I believe, considered it in conjunction with the committee on the part of the Senate, on one occasion when I was not present, at the Post-Office Department, a few days ago, and they instructed me to make the motion, when this bill was reached, to refer it to the Committee on the Post-Office and Post-Roads. They came to the conclusion that it is not worth while to saddle the Department with this extra expense at present."

Again:

"Mr. FARNSWORTH. I am only desirous the House should understand this matter. I have here now the figures showing the difference in these bids. These contracts before were let very soon. The contractors must make provision for their forage before the season is far advanced. There are five bids for carrying this mail. Wells, Fargo & Co., \$1,300,000, with the understanding that they are to carry printed matter if we pass this bill. There are four other bids, and the highest of which is \$460,000, being \$900,000 less than the bid of Wells, Fargo & Co. These other bidders made these bids with reference to the law as it is now, excluding heavy mail matter. The House will under-

stand that the law now does not exclude newspapers and periodicals to regular subscribers. It cuts a little hard on the book trade and the publication offices, the men who are dealing in these articles. The question for the House is whether we shall now add this \$900,000 to the expenses of the Department or wait a little. As fast as this railroad is completed these things are all carried, and in the course of a year very likely we may be able to amend the law without saddling this amount of expense upon the country. I now call the previous question."

It will thus be perceived that the chairman of the House Committee on the Post-Office and Post-Roads, the Postmaster-General, and the House Committee on Public Expenditures were all of the opinion that the act of Congress repealing the act of March 25, 1864, vitiated the contracts already entered into, and absolved the contractors from their performance. And, indeed, this would seem to be a correct inference, judging from well-settled principles of law. A contract is to be interpreted and enforced in accordance with laws existing at the time of the agreement; and the law in force at the time of making is always considered as entering into and forming part of the contract itself. Judged by this standard, Chauncey M. Lockwood agreed virtually to carry only the letter mail on route No. 16637 during the term of his contract; and although in that contract he obligated himself "to transport the whole of said mail, whatever may be its size, or weight, or increase, during the term of his contract," yet it must be construed to be the natural increase, such as would have taken place had the law of 1864 remained unrepealed. It is true Mr. Lockwood did not, like Mr. Spaid, avail himself of his right to be absolved from the performance of his contract with the Post-Office Department, but he is none the less entitled to payment for the additional expenses incurred by him in the faithful fulfillment of it.

In support of his claim for additional compensation Mr. Lockwood has presented his sworn statement, supported by the affidavits of H. J. Waldron, B. B. Bishop, B. P. Patterson, E. C. Brainard, W. F. McCrary, and Thomas E. Logan, postmasters along the mail route, and also the affidavit of John Hailey, tending to prove that the mails carried were more than doubled in amount after the 10th of October, 1868. Copies of these affidavits are hereto attached and made part of this report, and also a copy of a communication addressed by the Postmaster General to Hon. C. Cole, United States Senator, dated May 4, 1870, commenting on these affidavits. It was hardly necessary to establish, by testimony, the fact that the mails were more than doubled in bulk and weight after the repeal of the act of March 25, 1864, for it is admitted by the Post-Office authorities, and known to every one conversant with postal affairs, that at least four-fifths of all the mailable matter on any route consists of documents, books, periodicals, newspapers, and other printed material. The claimant, Mr. Lockwood, has also made a statement, verified by his own oath, and supported by the affidavits of John Hailey, Hill Beachy, James R. Robbins, C. C. Huntley, Bradley Barlow, and F. P. Sawyer, tending to show the amount of stock, material, and expense of carrying the mails on route 16637 under the contract as made on the 13th day of June, 1868; and also the actual expenses of carrying the same after the repeal of the act of March, 1864. This statement and the affidavits in support thereof are hereto attached and made a part of this report. From that statement it appears that the additional expenses incurred in carrying the increased mail matter were much greater than the amount claimed in Senate bill 241. It must be admitted, however, that the statement of expenditures is quite too general to enable the committee to arrive at an accurate conclusion as to the exact amount of additional cost and expense which Mr. Lockwood had to pay on account of the repeal of the act of 25th March, 1864. Nor do the affidavits before-referred to throw much additional light upon the subject. They do not give a detailed statement of what, and how much, Mr. Lockwood had to pay in consequence of the repeal of the act referred to. They merely state, in a general way, that they are acquainted with the route over which the stage-coaches ran; and, from their knowledge, they believe that the statement of Mr. Lockwood is correct. It would be much more satisfactory to the committee if the items, or at least the principal items of expenditure, had been set forth in the affidavits. They are satisfied that a very considerable amount of money is justly and equitably due to the claimant; but how much they are unable to determine with anything like exactness.

It may not be amiss here to state that at the time Mr. Lockwood entered into his contract to carry the mails the Government was paying \$150,000 per annum to the Atlantic and Pacific Mail Steamship Company for carrying the printed mail matter three times a month to San Francisco, which amount was saved by the repeal of the act of March 25, 1864, while the additional burden of carrying this printed mail matter was imposed upon Lockwood, and upon Wells, Fargo & Co., who succeeded to the contract of Spaid.

It may be further stated that the contract price for carrying the mails over the route from Salt Lake to the Dalles, both before and after the contract entered into by Lockwood, was considerably more than was paid to him for the same service. From October 1, 1866, to September 30, 1868, the pay of the contractors, Ben. Holladay and

Wells, Fargo & Co., was \$316,000 for six times a week service, and this, too, while the printed mail matter was carried by sea.

As before stated, by the terms of the contract between the Post-Office Department and Mr. Lockwood, entered into on the 13th day of June, 1868, to commence on the 1st day of October, 1868, and terminate on the 30th day of June, 1870, he was to be paid at the rate of \$149,000 per annum for carrying the mails from Salt Lake to the Dalles, but on the 17th day of June, 1869, an order was made curtailing this route to begin at Kelton, decreasing the distance 110 miles, and the pay of the contractor \$18,722, leaving Mr. Lockwood's pay \$130,278 for six times a week service over 765 miles of road; although it is said that he carried the mails seven times a week instead of six, as required by the terms of his agreement.

Under advertisement of September 30, 1869, this route was advertised from Kelton to the Dalles, 765 miles and back, six times a week, and was let to Messrs. Parker, Fuller & Barlow at \$192,000 per annum. On the 17th day of June, 1871, one additional trip per week was ordered, and the contractors allowed \$32,000 additional per annum, making the pay \$224,000 for seven times a week service.

It is true that the compensation to be paid to Mr. Lockwood depends upon the terms of his own contract, and not upon the amount paid to his predecessor nor to his successor; and yet, after all, where additional burdens were imposed on him by act of Congress, not contemplated when the contract was made, it may well be said that in equity he ought to be paid something like the same compensation as has been paid to his successor for a like service over the same route.

The committee therefore recommend that the amount of the difference between the rate per annum received by said Lockwood and the rate per annum received by the present contractors for carrying the mails over the same length of route be paid to C. M. Lockwood during the time he carried the mails under his contract with the Postmaster-General.

Affidavits.

DALLES CITY, OREGON, *October 11, 1869.*

I, H. J. Waldron, postmaster at The Dalles, Oregon, do hereby certify that, to my own knowledge, the weight and bulk of United States mail matter over mail-route 16637, from Salt Lake City, Utah Territory, to The Dalles, Oregon, was, within ten days after the 1st day of October, 1868, increased, has continued to be more than double the amount daily, and oftentimes a much greater increase; up to this date, in consequence of the paper and documentary mail having been thrown upon this route, which had not been at any time transported over this route previous to the 1st day of October, 1868, being the date of commencement of service under contract between Chauncey M. Lockwood and the United States Post-Office Department for the transportation of United States mail matter over the route aforesaid. And I further certify that said service and transportation has been performed since the first day of October, 1868, up to date, with regularity and dispatch.

H. J. WALDRON,
Postmaster, The Dalles, Oregon.

UMATILLA, OREGON, *October 12, 1869.*

I, B. B. Bishop, late postmaster at Umatilla, Oregon, do hereby certify that, to my own knowledge, the weight and bulk of the United States mail matter over mail-route 16637, from Salt Lake City, Utah, to The Dalles, Oregon, was, within ten days after the 1st day of October, 1868, increased, has continued to be more than double the amount daily, and oftentimes a much greater increase, up to this date, in consequence of the paper and documentary mail having been thrown upon this route, which had not been at any time transported over this route previous to the 1st day of October, 1868, being the date of commencement of services under contract between Chauncey M. Lockwood and the United States Post-Office Department for the transportation of United States mail matter over the route aforesaid. And I further certify that said service and transportation has been performed since the 1st day of October, 1868, up to date, with regularity and dispatch.

B. B. BISHOP,
Late Postmaster at Umatilla, Umatilla County, Oregon.
L. H. ADKINS,
Postmaster from August 7, 1869, at Umatilla, Oregon.

LA GRANDE, OREGON, *October 10, 1869.*

I, B. P. Patterson, postmaster at La Grande, Oregon, do hereby certify that, to my own knowledge, the weight and bulk of United States mail matter over route 16637, from Salt Lake City, Utah, to The Dalles, Oregon, was within ten days after the 1st day of October, 1868, increased, has continued to be more than double the amount daily, and oftentimes as much greater increase, up to this date, in consequence of the paper and documentary mail having been thrown upon this route, which had not been at any time transported over this route previous to the 1st day of October, 1868, being the date of commencement of service under contract between Chauncey M. Lockwood and the United States Post-Office Department for the transportation of United States mail matter over the route aforesaid. And I further certify that said service and transportation have been performed since the 1st day of October, 1868, up to date with regularity and dispatch.

B. P. PATTERSON,
Postmaster.

OCTOBER 11, A. D. 1869.

I, E. C. Brainard, postmaster at Union, Oregon, do hereby certify that, to my own knowledge, the weight and bulk of United States mail matter over mail-route 16637, from Salt Lake City, Utah Ter., to The Dalles, Oregon, was, within ten days after the 1st day of October, increased, has continued to be more than double the amount daily, and oftentimes a much greater increase up to this date, in consequence of the paper and documentary mail having been thrown upon this route, which had not been at any time transported over this route previous to the 1st day of October, 1868, being the date of commencement of service under contract between Chauncey M. Lockwood and the United States Post-Office Department for the transportation of the United States mail matter over the route aforesaid. And I further certify that said service and transportation have been performed since the 1st day of October, 1868, up to date with regularity and dispatch.

E. C. BRAINARD,
Postmaster, Union.

I, Wm. F. McCrary, postmaster at Baker City, Oregon, do hereby certify that, to my own knowledge, the weight and bulk of United States mail matter over mail-route 16637, from Salt Lake City, Utah Territory, to The Dalles, Oregon, was, within ten days after the 1st day of October, 1868, increased, has continued to be more than double the amount daily, and oftentimes a much greater increase, up to this date, in consequence of the paper and documentary mail having been thrown upon this route, which had not been at any time transported over this route previous to the 1st day of October, 1868, being the date of commencement of service under contract between Chauncey M. Lockwood and the United States Post-Office Department for the transportation of United States mail matter over the route aforesaid. And I further certify that said service and transportation have been performed since the 1st day of October, 1868, up to date with regularity and dispatch.

WM. F. MCCRARY,
Postmaster, Baker City, Oregon.

BOISÉ CITY, IDAHO TERRITORY, *December 27, 1869.*

I hereby certify, of my own personal knowledge, that the United States mail matter transported over mail-route No. 16637, from Salt Lake City to The Dalles, Oregon, was increased on or about the 10th day of October, 1868, at this office, to more than double the amount in weight and bulk which had ever been before transported upon that route, and said mail matter has continued to increase up to this date. We also certify that the present contractor, C. M. Lockwood, has carried or caused to be carried the mails over said route with regularity and in good condition, and without failure within schedule time. His promptness and efficiency are worthy the highest consideration.

Dated at Boisé City, Idaho, this December 27, A. D. 1869.

THOMAS E. LOGAN,
Postmaster Boisé City, Idaho Territory.
B. F. LAMKIN,
Deputy Postmaster, Boisé City, Idaho.

TERRITORY OF IDAHO, *County of Ada, ss:*

John Hailey, being first duly sworn, says that he is a citizen of the United States, and resides at Boise City, in the Territory of Idaho; that since the year 1865 he has been employed by the various contractors in transporting the United States mail on route No. 16637, from Salt Lake City to The Dalles, in Oregon; that he has been acquainted personally with the weight and amount of mail matter carried over said route down to the present time, and that he is now employed in carrying said mail for C. M. Lockwood, the present contractor. And he says that on or about the 10th day of October, 1868, the amount of mail matter suddenly increased to double and treble what it had ever been before, and has continued to increase up to the present time; that it requires at least double the quantity of stock on the route that it formerly did to transmit the mails, and that a just compensation for the increased service should not be less than \$100,000 per annum. Affiant further says that he is engaged in the business of running stages, and has been for the last six years, in the Territories of Idaho and Washington, and the State of Oregon, and that the above estimate is based upon the personal knowledge of affiant of the cost of transportation by stage through the region of country embraced in the route of said Lockwood; and further saith not.

JOHN HAILEY.

Subscribed and sworn to before me this the 29th day of December, A. D. 1869.

[SEAL.]

E. J. CURTIS,
*Secretary of Idaho.*POST-OFFICE DEPARTMENT, *Washington, D. C., May 4, 1870.*

SIR: The "petition and accompanying papers of Chauncey M. Lockwood, praying for increased compensation for carrying the mail between Salt Lake City and The Dalles, Oregon, owing to the increased weight of the mail, occasioned by action of Congress, had subsequent to the award of his contract, by which printed matter, formerly sent by sea, was transferred to the route awarded to the petitioner," left by you at the Department, have been examined, and agreeably to your verbal request, the following statement is submitted:

Under an advertisement issued March 9, 1868, C. M. Lockwood was the lowest bidder for carrying the mails on the route in question, being from Salt Lake to The Dalles, 875 miles, six times a week, and back, at \$149,000 per annum. Service from October 1, 1868, to June 30, 1870, one year and three-quarters. The acceptance of the proposal was on the 15th of June, 1868, and on the 24th of August succeeding he executed a contract, with sureties, as required by law. On the 17th of June, 1869, the service was curtailed to begin at Indian Creek, or Kelton, a point on the Central Pacific Railroad, just then completed, and the sum of \$18,732 per annum deducted from the pay, leaving it at \$130,278 per annum.

By the fourth section of an act of Congress, approved March 25, 1864, it is provided "that all mailable matter which may be conveyed by mail westward, beyond the western boundary of Kansas, and eastward, from the eastern boundary of California, shall be subject to prepaid letter-postage rates," and by act approved June 25, 1868, the above section is made "to cease and determine on and after the 30th day of September, 1868."

It is on this action of the legislative will that this claim is based, the allegation being that the removal of the charge of letter-postage on printed mail matter caused so large an influx of such matter on the route as to double the weight previously carried, and on which the contractor had founded his calculations when making his bid. In support of his statement as to the increased weight of mails after the repeal of the act mentioned, the petitioner presents certificates of five postmasters in Oregon, all in the same language, saying that, to their "own knowledge," "the weight and bulk of the mail matter" was, "within ten days after the 1st of October, 1868, increased, has continued to be more than double the amount daily, and oftentimes a much greater increase up to this date." A similar statement is made by the postmaster and two citizens of Boise City, Idaho, but by no one is the bulk of the original mail given so that an idea can be formed of the actual weight either before or after the change in the law. Its weight may have been doubled, as alleged, and yet have imposed no severe burden on the horses and coaches which it is stated were employed in its conveyance. If, for instance, the mails were originally 100 or 200 pounds in weight, and were doubled by the operation of the repealing act of Congress, the whole weight would not have been more than is usually carried on a coach with four horses. In no event would they have so increased as to justify the extravagant sum claimed. The stock once purchased and the arrangements made for the conveyance of, say 500 pounds of mail, it can not be pretended that a similar outlay is required for the conveyance of another 500. It should be remembered, also, that heavy mails, comprising public documents,

magazines, books, and papers, originate in the cities of the East—Washington, New York, etc.—and are carried West, very few, or none, traveling from the West to the East, so that the return trips of this service could not have been overburdened from this cause. In proof that these postmasters, and particularly those at The Dalles, Umatilla, and other places in Oregon, must have spoken hastily and at the dictation of others, in stating that these mails were doubled in weight “within ten days after the 1st of October, 1868,” it may be mentioned that the great chain of railroad across the continent was not then completed, and it was not possible for these extra mails to have reached those distant places from Washington, New York, etc., in ten days, the schedule time alone from Salt Lake to The Dalles being nine days, and a longer time must have been consumed in reaching Salt Lake.

As stated, the act repealing the fourth section of the act of March 25, 1864, passed June 25, 1868, and two months thereafter, viz, August 24, the petitioner executed a contract for the fulfillment of his obligations, by the first article of which he covenants with the United States “to carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, or weight, or increase, during the term of this contract.”

With this detail of the facts, it remains for Congress to say if this claimant is entitled to the relief he demands, or to any relief.

The petition and papers are herewith returned.

Respectfully, your obedient servant,

JNO. A. J. CRESWELL,
Postmaster-General.

Hon. C. COLE,
Of California, Senate.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

John Hailey, being first duly sworn according to law, deposes and says that he is a citizen of the United States, and that his residence is at Boise City, in the Territory of Idaho, and his occupation that of running stages. He further says that he has been engaged in said business for the last six years, and is now running a line through Idaho Territory and the State of Oregon; that he is well acquainted with the cost of stock and material for staging, and with the necessary expenses of running stages thereon; that he is well acquainted with the line embraced in the contract of C. M. Lockwood, mail contractor, from the Overland Railroad to Dalles, in Oregon; that he has examined the foregoing statements of C. M. Lockwood in regard to the expenses of said line, and says they are just and true; and that the prices charged are, to the personal knowledge of this affiant, not above, in any case, the actual cost; and further affiant saith not.

JOHN HAILEY.

Subscribed and sworn to before me this 28th day of February, A. D. 1870.

[SEAL.]

FRED'K KOONES,
Notary Public.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Hill Beachy, being first duly sworn according to law, deposes and says that he is a citizen of the United States, and resides in the Territory of Idaho; that for four years past he has been engaged in the business of owning and running stages in the Territory of Idaho and the State of Nevada; that he is well acquainted with the cost and prices of stock and material for staging in the Territory of Idaho, and with the cost of running stages, including wages, board, etc.; that he is acquainted with the route of C. M. Lockwood, from the Overland Railroad to Dalles, in Oregon; that he has read and examined the statements of expenses on said line, submitted in the annexed paper, signed by said Lockwood; and the affiant states from his personal knowledge of the cost of like material, and other expenses embraced in said statements, that they are just and reasonable, and are not above the actual cost; and further saith not.

HILL BEACHY.

Subscribed and sworn to before me this 28th day of February, A. D. 1870.

[SEAL.]

FRED'K KOONES,
Notary Public.

DISTRICT OF COLUMBIA, *City and County of Washington, ss:*

James R. Robbins, being duly sworn, deposes and says that he is a citizen of the United States, and a resident and inhabitant of the city of Seattle, in the Territory of Washington; that he has resided in said Territory for the last fifteen months, and that

previous to residing in said Washington Territory he resided in Oregon ever since the year eighteen hundred and fifty-eight (A. D. 1858); that he is well acquainted with the mail route from Kelton, Utah, to The Dalles, in Oregon, and with the country through which said route runs, and has been so for several years; that he is well acquainted with the memorialist, Chauncey M. Lockwood, the contractor carrying the United States mail on and over said route, and was frequently over said route, both while the said Lockwood was engaged carrying the mail thereon, and before; that deponent, while residing in Oregon, was for some time a contractor engaged in transporting merchandise over a portion of said route and was also engaged in the mercantile business; that for a considerable distance on said route persons engaged in transportation over said route had to convey and carry with them provender for horses, there being no way of obtaining the same in such parts of said route; deponent says that said route was a daily line for the carrying of the United States mail, and he remembers about the time when by a change in the regulations of the Post-Office Department the amount, weight, and bulk of mail matter transported on and over said route was vastly increased; and deponent further says that, from his knowledge of said route and the country through which it runs, and its resources and capabilities, and from his experience in the business of transportation in that country, and taking into consideration the changes necessarily to be made in size of conveyances, in increased number and pay of drivers and other help, and in the necessary appliances connected with a stage line the increased cost of running a daily line of four-horse conveyances on the said route, over and above the cost of running two-horse coaches, would be not less than one hundred and twenty-five thousand dollars (\$125,000) a year according to the best judgment of deponent and as he verily believes.

JAS. R. ROBBINS.

Subscribed and sworn to before me this 19th day of January, A. D. 1872.

[SEAL.]

CHAS. CONS. CALLAN,
Notary Public.STATE OF NEW YORK, *County and City of New York*, ss:

I, Charles C. Huntley, of the Territory of Idaho, being first duly sworn according to law, do depose and say that I am familiar with the duties and obligations of a United States mail contractor, and have been engaged in carrying the United States mails during the last six years; and that I am perfectly familiar with the mail route extending from Kelton, in the Territory of Utah, to the Dalles, in the State of Oregon; and am at this time one of the contractors and the general managing agent of the said route, formerly route No. 16637, and now No. 16622. Deponent further says that he has thoroughly examined the memorial and other papers in the case of Chauncey M. Lockwood, praying compensation for additional mail service performed by him on the said route, and believes from his knowledge of the additional service over and above what his contract required, owing to the repeal of the law of 1864, that the said C. M. Lockwood is entitled to the indemnity asked for in the said memorial; and that he actually expended the said sum over and above what his contract required of him, if the service had remained as at the period of the awarding of the said contract, and before the repeal of the said law of 1864. And deponent further says that, of his own personal knowledge, prior to the repeal of the said law of 1864 the United States mails were transported over the aforementioned route in a jerkey; and that, after the said repeal of the said law, the claimant was compelled to put on the route four and six horse coaches; and that, because of the then high prices of stock, labor, and supplies of all kinds, the said C. M. Lockwood was at vastly increased expenses over what he could have expected when entering upon the service on said route; and that the weight of the mails per trip going west on the said route is about 1,200 pounds each day; and that the weight of the mails and the mail-bags on the eastward trips weigh about 400 pounds daily. And from these reasons the deponent further says that he verily believes that the said Chauncey M. Lockwood is justly entitled to recover the amount claimed in his said memorial.

C. C. HUNTLEY.

Sworn to before me this 23d day of January, 1872.

[SEAL.]

N. C. BISHOP,
Notary Public for New York City.DISTRICT OF COLUMBIA, *City of Washington*, ss:

Bradley Barlow, being duly sworn, deposes and says he is a contractor, engaged in carrying the United States mail on several routes on the Pacific slope, and has been for several years engaged in, and connected with, the business of carrying the mail under

contracts with the Post-Office Department, and he is generally acquainted with that business, its requirements, cost, and expense, from many years' attention and experience. Deponent remembers about the time, namely, in the early part of October, 1868, when the change was made in the post-office laws, whereby the printed mail matter was sent overland instead of by sea; and from his best information and belief the result of said change was to increase several fold the quantity, weight, and bulk of the mail matter sent over the daily mail route from Kelton, in the Territory of Utah, to the Dalles, in the State of Oregon, on which route Chauncey M. Lockwood was the contractor; and from deponent's information and belief the said increase of mail matter on said route made necessary a change in vehicles, an increase in number of men and horses employed, and, in fact, an increase of all the means, facilities, and appliances used in that service. In the country through which a great part of said route extends nothing was raised, and feed had to be transported by the contractor. Deponent further says, taking for granted, as he verily believes the facts were, that the said increase of mail matter compelled a change in the vehicles or conveyances as aforesaid; then, of necessity, the cost of said service on said route was greatly increased, involving a large increase of the number of men and animals employed, and an entire change of vehicles, so as, in my judgment, to at least double the expense and cost of mail service to the contractor. And deponent says he is in nowise interested, directly or indirectly, in the application made by said C. M. Lockwood to Congress for relief, or in the result of said application.

BRADLEY BARLOW.

Subscribed and sworn to before me this 1st day of February, A. D. 1872.

[SEAL.]

H. CLAY JOHNSON,
Notary Public.

GEORGETOWN, D. C., February 19, 1872.

To whom this may concern :

I hereby certify that I am, and have been, engaged in the stage business in the Southwest, carrying the United States mails most of the time for thirty years, sometimes over as much as 3,500 miles of road, and I have carefully examined the statement made by C. M. Lockwood, esq., as to expenses, etc., on route No. 16637, and I think said statement very reasonable. Where I have carried on said business, and had from fifty to two hundred teams together on heavy work, heavy mails, etc., I find to pay all expenses it will average about \$2,500 a year for each and every four-horse team running 12 miles every day; this will be varied some by the prices of forage, etc. I find Mr. Lockwood has itemized his statement of expenses, but it amounts to about the same, that is, \$2,500 per annum for each and every team, perhaps a little more. The prices now at Concord, N. H., where I have always bought my coaches and harnesses, and the largest coach factory now in the United States, and for the regular overland wagon is \$625 for a four-horse wagon to carry nine inside, the prices now for a regular nine-passenger post-coach at the shops is \$900. Harness, by the lot of twenty set or more, is now \$75 a set for a four-horse team. I shipped several new passenger coaches last year from Concord to Baxter Springs, Kans., and was charged something over \$100 for each coach, and the charge to Salt Lake City must be at least \$150 each coach. The increased expenses of running a four-horse line over and above that of a two-horse line will vary some on account of the roughness of the country and the weight of the mails, etc., but will average about 75 per cent. more to run four horses than a two-horse line. And further that I have no interest, direct or indirect, in this claim.

F. P. SAWYER.

Subscribed and sworn to before me (interlineations made at time of attestation).

[SEAL.]

CHAS. CONS. CALLAN,
Notary Public.

Your committee therefore report back bill S. 928 without amendment, and recommend its passage.

WILLIAM L. WINANS.

JUNE 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LAPHAM, from the Committee on Patents, submitted the following

R E P O R T:

[To accompany H. R. 9160.]

The Committee on Patents, to whom was referred the bill (H. R. 7998) entitled "A bill for the relief of William L. Winans," respectfully report as follows:

The bill relates to certain inventions in spindle-shaped vessels made by Ross Winans and his two sons, Thomas Winans and the said William L. Winans, all of Baltimore, in the State of Maryland.

It appears that this family of Winans long ago became distinguished in mechanical and engineering pursuits, particularly in the development of the American system of railroads, and that about the year 1842 they undertook the equipment of the railways in the Empire of Russia upon the American plan by contract with the Russian Government. It further appears that this work was successfully carried out and that business relations thus established continued for many years, the said William L. Winans in consequence spending much of his time abroad, and in the course of his connection with the Russian Government rendered it assistance in the construction and equipment of gunboats in the Crimean war.

It appears further that as long ago as 1858, and even prior to that time, the father, Ross Winans, and the sons Thomas and William L. Winans became impressed with the idea that the construction of ocean-going steam vessels could be greatly improved by the adoption of the spindle-shaped hull, and after discussion and consideration between father and sons, letters patent of the United States, three in number, were taken out by Ross and Thomas Winans, all bearing date of October 26, 1858, the said William being then in Russia.

The subject continued thereafter to be pursued with great interest, and from time to time additional patents were taken out, to most or all of which said William Winans was a party, and experimental constructions were instituted and carried forward in Baltimore and in St. Petersburg in the joint interest of the father and the two sons, all contributing to the expense, the work in St. Petersburg being under the supervision of the said William L. Winans.

The work was pursued for several years as a joint enterprise, until, at some time prior to 1880, the said William Winans was left the sole active party, his father having retired and his brother Thomas having died.

From the year 1877 the work of developing the invention has been assiduously pursued by the said William L. Winans alone.

The problems which these inventors set themselves involved an entire revolution of the art of building ocean-going steam vessels. The length of the vessel in proportion to its breadth was to be enormously increased, involving questions of relative strength of parts, to be determined only by actual experiment in all conditions of weather, the best means of propulsion and in steering, the true proportions between length and breadth of beam, the arrangement of cabin and deck attachments, the internal construction and arrangement of hull, and the vast variety of other details the enumeration of which would burden this report. Enough are referred to here to indicate the magnitude of the undertaking and the impossibility of reaching the objects aimed at without the consumption of years of experiment and the expenditure of very large sums of money.

It is claimed by the said Winans in his affidavit submitted to the committee, and confirmed by the affidavits of others, engineers associated with Mr. Winans in developing this new type of steam vessel, and further confirmed by the statements of Mr. Osmun Latrobe, of Baltimore, Md., that vessels have now been constructed and perfected of the new type, which obviate rolling and pitching and which possess every desirable quality of seaworthiness, including an almost absolute degree of safety.

Mr. Winans also claims in his affidavit, which is confirmed by the other engineers above referred to, that a much higher degree of speed is attainable by vessels of the new type than by any kind of vessel now in use, and that by means of numerous close compartments danger from fire and from sinking is almost wholly obviated.

The foregoing statements are submitted as explanations of the reasons for the relief asked for in the bill.

Mr. Winans having now, after protracted efforts, finally developed this system of construction of ocean-going steam vessels, which he believes, and which his associates, who have participated step by step with him in the evolution, believe, is of vast benefit to mankind by materially diminishing the difficulties and the dangers of ocean navigation, desires Congress to permit him to make application to the Commissioner of Patents for the issue to him of letters patent of the United States for spindle-shaped vessels invented and developed by him, notwithstanding the matters contained in the previous patents taken out by him or by other members of the family above referred to.

Under the law now in force, as is well known, an applicant can not cover in his patent any features disclosed in a prior patent granted to himself or to any other person. The prior patent is a bar to so much as is disclosed by it, but inasmuch as the prior patents in this case issued to members of the Winans family were premature and incomplete, as claimed by the representatives of Mr. Winans, and only capable of practical use when embodied in a perfected system, he presents in this bill his request that, notwithstanding what has appeared in the prior patents, he may now be permitted to group all the details together into one system and cover it by a patent exactly as if the former patents had never been issued.

It is not understood by your committee that the bill embraces any other inventions than those made and developed by the said Winans, nor that the patent can issue unless it is established before the Commissioner of Patents that the invention has now been successfully reduced to practice by said Winans, nor unless the Commissioner finds that the said Winans has received no compensation or pecuniary return

for the time and money expended by him in the development of the invention.

The time devoted to this development is stated to be thirty-five years, and the sum expended nearly \$4,000,000. For twenty years it has cost him on an average of \$75,000 a year for salaries of engineering staff, navigators, and other employes, exclusive of construction account.

Your committee have considered the possible effect of this bill upon parties who, after the expiration of the several patents above referred to, may have taken up the inventions thereby disclosed, and expended thought and money in utilizing or endeavoring to utilize such inventions, or portions of them, and have prepared a substitute bill with provisions which they believe sufficient to protect such parties, if any there be; they have also carefully protected any rights, equitable or legal, that may remain in the other members of the family.

By the provisions of the bill our Government reserves the right to use the patented invention at all times for public purposes without making any payment therefor. If the expectations of Mr. Winans are realized in the construction of war vessels of this type, this privilege will be invaluable. In view of the great speed of these vessels, ease of handling, and rounded exterior of a great part of the surface, such vessels, when armored, would be formidable antagonists in any naval struggle.

The committee are satisfied from the evidence submitted to them that the said William L. Winans is capable of building a new and remarkable type of ocean-going steam vessels, which gives promise of great benefit to the commerce of this country; that he now has a vessel of the new type 256 feet in length, which fully demonstrates the claims, as aforesaid, made by said Winans; that there is reason to believe vessels of this class can be rendered very effective in the revenue and naval service of the United States, and they unanimously recommend the passage of the substitute bill.

Without prejudging the action of the Commissioner of Patents, should this bill become a law, the committee can not refrain from alluding to the persevering enterprise, executive ability, and inventive genius of this American citizen, and it seems to your committee to be in the line of true public policy to encourage the efforts of such citizens when directed towards the public welfare.

EXHIBIT A.

In the matter of the proposed application for letters patent of the United States for improvements in and relating to spindle-shaped vessels.

AFFIDAVIT OF WILLIAM LOUIS WINANS.

William L. Winans, being duly sworn, on oath deposes and says that he is a citizen of the United States and a native of the city of Baltimore. He is the son of Ross Winans and brother of Thomas Winans, both now deceased, who, like deponent, were engaged during their lifetime in mechanical and engineering pursuits, and were particularly identified with the development of the great American system of railways.

About the year 1842 a commission was sent by the Government of Russia to this country to procure the services of the most experienced constructor of rolling stock for railways; and after investigation said commission made a proposition to Mr. Ross Winans to undertake the equipment of railways, upon the

American plan, in the Empire of Russia. As the result of this proposition, Thomas Winans went to Russia, followed shortly after by deponent, who, as is well known, carried out the project with such satisfaction to the Government that their relations with that Government continued for many years.

During the Crimean war deponent, being then in Russia, rendered assistance to the Russian Government in the construction and equipment of gunboats for use in that war. From this time to the present deponent has given attention to and been interested in matters pertaining to the construction of vessels.

Some time prior to the year 1858 deponent and his father and brother, above mentioned, had considered and discussed together the drawbacks and disadvantages of the prevailing types of ocean-going steam vessels, and were impressed with the idea that the principles and general forms and proportions of hulls applied and embodied in the construction of vessels were very far from the theoretical principles adapted to secure the best results in navigation. We reached the conclusion that, in point of economy of power and space, of speed, of stability, in all kinds of seas, whether cutting the waves or in the trough of the sea, greatly improved results could only be achieved by a radical departure from prevailing theories. In our interchange of ideas on this subject the conception of what is known as the "Spindle-shaped hull" had its origin; and the matter was under discussion and consideration by deponent and his father and brother, forming the subject of conversations when together, and of correspondence while deponent was in Russia.

When these ideas became matters of settled conviction letters patent were applied for, indicating in a general way the plans and views of the inventors as they existed at that time, and reference may here be made to letters patent No. 21917, No. 21918, and No. 21919, all dated October 26, 1858. Owing to deponent's absence in Russia at the time, these patents were applied for and issued in the names of Ross and Thomas Winans, who were then in Baltimore.

From that date to the present time the development of the spindle-shaped vessel has occupied a large part of deponent's time, study, and thought. Other patents relating to the same general subject were issued in the years 1861, 1866, 1873, and 1875, the patents taken out in the three last-mentioned years being issued in the name of William L. Winans, the present deponent, and Thomas Winans.

Experiments were begun in Baltimore and continued under the personal supervision of Ross Winans and Thomas Winans, and in St. Petersburg under deponent's supervision; and in all these and subsequent experiments deponent contributed of his means to the expense involved (which was very heavy), and contributed by advice and suggestion to all the steps taken, and all improvements made in construction of vessels built according to the invention. Deponent at this time owned two-fifths interest in the enterprise, Thomas Winans two-fifths and Ross Winans one-fifth.

About the year 1866 Ross Winans ceased to contribute by money or personal effort towards bringing the invention into practice, and about the year 1877 Thomas Winans also severed his active connection with the enterprise, and subsequently (after the latter's decease, about 1878) deponent purchased of his heirs his (Thomas Winans') two-fifths interest; so that from the year 1877 to the present day the work of developing the invention, which has been conducted systematically and incessantly, has been carried on by deponent individually and at his own personal cost.

Although the theoretical advantages of the spindle-shaped hull were fully apprehended by deponent many years ago, the embodiment of the idea in practical form for actual use has involved difficulties and problems of such number, complexity, and variety that it is difficult to give an account of them. The departure from accepted theories was so radical that an entirely new field in naval engineering was opened. No assistance could be obtained from the traditions and principles of the shipbuilder's art as it then existed, but on the contrary, every detail had to be determined by actual test under all the varying conditions of wind and weather which a vessel is expected to encounter.

The principal problems related to—

- (a) The exact shape of hull adapted to realize the best results;
- (b) The proportion of length to breadth of beam;
- (c) The best means of propelling vessels of spindle form;
- (d) The best means of steering such vessels;
- (e) The best trim;
- (f) The internal construction and arrangement of the hull;
- (g) The length in proportion to length of waves to be encountered;

- (h) The proportions of cabin and deck attachments;
- (i) The means for insuring safety against burning and sinking;
- (j) The relation of the meta-center and the center of gravity with respect to the stability of the vessel.

For the purpose of ascertaining the proper forms under the above heads, deponent has constructed four different vessels, and these have been dismembered and changed in bow, stern, and body many different times, and several hundreds of experiments have been tried in smooth water and among waves of different heights.

When it is taken into consideration that many thousands of years and the united efforts of millions of individuals have been required to develop the present type of hull from the primitive dug-out, it will not be thought strange that a period of thirty-five years has been spent in developing, in the hands of a few individuals, the type of spindle-shaped hulls.

The principles of construction which have been determined and the solutions of problems discovered with reference to all the matters indicated under the above headings, as well as with reference to other matters of minor importance, have been now embodied in vessels sufficiently large to bring to actual test all the questions involved in determining the behavior of such vessels under varying conditions of wind and water.

From observations and experiment in actual use and under all conceivable conditions the principal results obtained will now be stated under the following heads:

1ST. PRACTICABILITY OF CONSTRUCTION OF VESSELS OF SPINDLE FORM MUCH LONGER IN PROPORTION TO BREADTH OF BEAM THAN THE PROPORTION OF NINE TO ONE.

In a vessel constructed according to our invention, and having a deck and cabins occupying the middle portion of the hull, much less materials are required, in proportion to displacement, to give the proper strength to the various parts of the vessel, for the following reasons:

(1) The ends of the vessel are comparatively light and of little displacement, and as a consequence less strain is placed on the materials near the middle of the vessel when the said ends are alternately immersed in the waves and lifted out of the waves than is placed on the middle of vessels of ordinary type which have their ends much heavier and of greater displacement.

(2) The deck or decks, cabin or cabins, usually occupy about two-thirds of the upper portion of the middle body of the spindle-shaped hull, and consequently a greater depth can be obtained from the top deck to the bottom of the hull; and since the tension and compression on materials at the bottom and top of a vessel when moving amongst waves are decreased in proportion to this depth, it follows that less materials may be used in the construction of these parts.

(3) All the surface of the hull of the spindle-shaped vessel where water comes in contact with it is a complete circle, where it projects fore and aft of a deck or decks, cabin or cabins, on the upper portion of the middle part of the spindle-shaped hull, and a portion of a complete circle under a deck or decks, cabin or cabins, on the upper portion of the middle part of the spindle-shaped vessel.

As this convex circular surface of the skin plate of the vessel enables skin plates to more effectually resist the pressure of the water against them than if the skin plates were on plain flat surfaces, as is the case in a great part of the skin plates of vessels of ordinary type, much less material is required in inside ribs for strengthening the skin plates in vessels with spindle-shaped hulls than in vessels of the ordinary type, and the materials saved in this way can be employed at the top and bottom of the central part of the vessel for giving greater longitudinal strength to the vessel.

(4) From the circular form of hull enabling more bulk in proportion to outside surface (as explained under head 3d below) than the form of vessels of other types do, there is a less surface of skin plates in proportion to displacement in vessels of our invention, and consequently there is a saving in weight of materials.

In this way there is obtained in vessels constructed according to our invention four very important elements for making a much smaller amount of materials answer for obtaining the requisite strength of parts, and this, it is clear, will aid in being able to obtain sufficient strength to resist strains that come upon them when the middle of vessel is alternately on the crest and in the hollow of waves, tending to place tension and compression alternately on the materials composing the top and bottom portions of vessels and break them in two.

Besides the saving in weight of materials as above named having an important effect on enabling the length of vessels according to our invention being made longer in proportion to beam, the long slim ends of the spindle-shaped vessels, although they sometimes embrace some one-third of the whole length of vessel, are not more than about one-sixteenth part of its displacement, and as the conical bow and stern have the effect of calming down the waves as they pass through them, the remaining two-thirds of the middle part of the vessel is so evenly supported by comparatively smooth water on all parts of its length, that but very slight strain is put upon the materials in the top and bottom parts of the vessel when moving amongst waves, as compared to what is placed on the middle part of vessels of ordinary type, which have short, heavy ends (and on which, from their shape, the waves can rise and fall without being calmed down), which on being alternately immersed and out of the water amongst waves, put greatly increased strain upon the materials in the top and bottom parts of the middle of such vessels, as compared to what is put upon the material in the top and bottom of vessels according to our invention.

For reasons principally as above named, a very much longer vessel of the type of our invention can be constructed in proportion to beam than of any type heretofore used, and it will be seen from what is stated under the below heads, 2d, 3d, 4th, and 5th that this important element of greatly increased length in proportion to beam, together with other important elements inherent in the spindle-shaped vessel in combination with a deck or decks, cabin or cabins, according to our invention, will enable (amongst others) vessels of modern displacement and draught to be constructed, which will cross the Atlantic when in its boisterous state, without any appreciable rolling or pitching, at a speed of over thirty miles per hour with perfect safety and comfort.

2D. CONCERNING ABSENCE OF ANY APPRECIABLE PITCHING AMONG WAVES.

It will be intelligible to any one familiar with ocean navigation, that if it is required to make a vessel which will not pitch among the waves of certain lengths, a vessel sufficiently long in proportion to the length between the crest of the waves will entirely prevent pitching.

Well-known calculations for ship building show that a vessel such as we have invented, when about two-thirds of the central part of the spindle-shaped hull, in combination with a deck or decks, cabin or cabins, according to our invention, having long, narrow-pointed ends, circular at each part of their length, projecting fore and aft of the deck or decks, cabin or cabins, of very light construction, and embracing but about one-sixteenth part of the displacement of the entire vessel, can be made sufficiently strong when its length is as much as about *twenty-seven times its beam*, whilst vessels for ocean navigation of all other types at present in existence are not made longer than about *nine times* their beam, and the materials at the top and bottom in the middle of the vessels of even this length in proportion to beam are strained up to nearly the full strength that they will resist.

From this it can be readily understood that if there was a vessel such as we have invented, and another of the ordinary type for ocean navigation, each of, say 60 feet beam and of a length nine times the beam, or 540 feet in length, and each of the two vessels of the same displacement, say of 12,000 tons, and then if it was desired to construct a vessel three times as long as the vessels above named for preventing pitching among waves of certain length, a vessel according to our invention could be made of same beam as the two vessels above mentioned and twenty-seven times longer than its beam, or 1,620 feet long, and its displacement would not exceed three times the displacement of either of the two vessels above named, nine times longer than their beam, or 36,000 tons, whilst as vessels of the ordinary type are not made longer than nine times their beam, a vessel of the ordinary type employed for navigating the Atlantic Ocean would require to be of three times the beam and three times the depth to make it 1,620 feet long for preventing its pitching amongst certain sized waves, and as the displacement of such a vessel with all its dimensions increased three times would be as the cube of the length or beam or depth, the displacement of a vessel of the ordinary type 1,620 feet long would be twenty-seven times as much as the vessel 540 feet long, or 324,000 tons.

It is thus seen that a vessel constructed according to our invention, to be long enough to prevent pitching amongst certain sized waves, would be but of one-ninth as much displacement and but one-third of the draught of water of a vessel built according to the ordinary type for ocean navigation, thus showing that

whilst vessels according to our invention could be made long enough with moderate displacement and draught of water to prevent pitching (and, as will be shown below, to prevent rolling) amongst the largest ocean waves, this could not be done with vessels of the ordinary type.

3D. CONCERNING ABSENCE OF ANY APPRECIABLE ROLLING AMONGST WAVES.

The length of vessel in proportion to length of waves in which it is moving likewise has a most important effect on preventing a vessel made according to our invention from rolling amongst waves, and we have proved by hundreds of experiments with vessels amongst waves that when a vessel is made long enough in proportion to the length of waves to prevent pitching, then the vessel does not roll to any appreciable extent when moving in any direction or at any speed among such waves.

Our numerous observations in hundreds of experiments with vessels constructed according to our invention moving amongst waves (when long enough in proportion to length of waves in which they move to prevent pitching) have also assisted in showing the reasons for this absence of appreciable rolling to be principally as follows:

In the first place, when vessels of the type of our invention are long enough to prevent pitching amongst the waves in which they move, the natural period of roll of the vessel is greatly in excess of the period of roll of the waves amongst which they are, and this being so, it gives great stability against rolling when the vessel is stationary or moving in any direction and at different speeds amongst waves.

Our observations concerning other reasons (besides the natural period of vessels' roll being greatly in excess of the wave period) for such vessels not rolling when stationary or moving in different directions amongst waves were as follows: (1) In moving with bow or stern to the sea, the waves are broken and fall down and make comparatively smooth water for the remaining part of the vessel to pass through. When head to sea, the spindle-shaped bow (projecting beyond the deck or decks, cabin or cabins), has passed through the waves, or when stern to sea the waves have rolled past the spindle-shaped stern (projecting beyond the deck or decks, cabin or cabins), the observations in numerous experiments show that there does not appear to be force enough in the waves after they are calmed down by the said long, slim bow and stern of the vessel pricking them and causing them to fall down, to cause the vessel to roll when running with bow to sea or stern to sea, not even when running away from the sea at a speed which causes the apparent period of waves to become exactly the period of natural roll of the vessel.

(2) In moving amongst waves with the sea on the bow or quarter, observations show that when running in this way the waves are calmed down by one part of the vessel passing through them so as to make comparatively smooth water for other parts of vessel, as when bow or stern to sea, and they have also shown that when water on one part of the vessel's length may be higher on one side than on the other, so as to cause a tendency to roll at this part of the vessel, there is generally the reverse of this occurs at another part of the vessel, tending to roll the vessel in the other direction, and thus the two forces counterbalance each other; and numerous experiments have shown that if the vessel is long enough to prevent pitching it does not roll when moving with the sea on the bow or on the quarter, even when the apparent period of the wave is exactly the period of the natural roll of the vessel.

(3) In moving or stationary among waves with sea on the beam (in the trough of the sea) the waves scarcely ever have a regular straight trough as long as the vessel's length, and the waves roll under the circular form of the spindle-shaped hull so freely that the water is not piled up against the vessel on the side towards the approaching waves much more than on the other side.

Besides the above-named causes for vessels of our invention not rolling with sea on beam, the natural period of roll of vessels of the type of our invention (when the vessel is sufficiently long in proportion to length of waves in which it moves to prevent pitching amongst waves) is greatly in excess of the period of roll of the waves in which it is stationary or moving; consequently the rolling which takes place with the sea on the beam in vessels of the ordinary type, from the power of rolling communicated to them by the rolling waves (the extent of rolling augmenting as the period of waves approach nearer to the natural roll of vessel, and becoming very dangerous when the period of the roll of the wave is the same as the natural period of roll of the vessel) appears to be entirely

counteracted in vessels of our invention by the natural period of roll of vessel being greatly in excess of the period of the waves, and by what we have observed in experiments with them about the waves rolling under the circular form of the spindle-shaped hull so freely that the water is not piled up against one side much more than the other.

It having been proved by hundreds of experiments that vessels constructed according to our invention (when long enough to prevent pitching amongst waves in which they are moving) do not roll to any appreciable extent when moving in any direction or at any practicable speed amongst waves, although what I named under subheads (1) (2) and (3) above appears from all our observations to be the reasons for this, the reasons are immaterial, the fact of not rolling being the essential.

4TH. CONCERNING INCREASED SPEED OBTAINABLE BY VESSELS CONSTRUCTED ACCORDING TO OUR INVENTION.

Such vessels (when sufficiently long in proportion to length of waves to prevent pitching and rolling) can attain a much higher speed, especially amongst waves, than any kind of vessel now in use, for the below-named principal reasons:

(1) In vessels constructed according to our invention circular surfaces are presented to the water and waves, and as a circle embraces the greatest bulk with the least outside surface, vessels according to our invention have less surface exposed to the water in proportion to displacement than vessels of the ordinary type, and as the principal resistance to propulsion is the skin resistance of the vessel in passing through the water, the less surface exposed to the water, and consequent proportionate less resistance to propulsion in vessels constructed according to our invention, will enable greater speed to be obtained by spindle-shaped vessels as compared to vessels of the ordinary type with equal power.

(2) Spindle-shaped vessels having slim conical ends, when moving without pitching amongst waves, will not receive shocks from the waves to retard its progress amongst them, whilst vessels of the ordinary type, when amongst waves of considerable length in proportion to their own length, are often brought nearly to a standstill when moving head to sea and sea on the bow by the force of the waves in which they are pitching and rolling.

The absence of shocks and the smooth, straight course of the vessel amongst waves when they do not pitch will enable vessels of our invention to be propelled amongst waves at almost exactly the same speed that they can be propelled with the same power in smooth water, whilst vessels of the ordinary type (which are never made long enough to prevent pitching) when moving amongst waves which are found on the Atlantic at almost every trip they make, the speed of the vessel is reduced below the smooth-water speed more and more as the length of the waves increase in proportion to the length of the vessel.

(3) The spindle-shaped vessel moves through the water with very considerably greater economy of power (when long enough in proportion to length of waves to prevent pitching) by its not yawing about in moving in any direction amongst waves, but going a perfectly straight course without requiring almost constant movement of the rudder to be used to keep it on its straight course.

The rudder is often used in vessels of the ordinary type, when moving with large waves on the bow or quarter, to such an extent, to prevent yawing, that this causes great additional resistance to the vessel moving through the water and greatly retards the speed.

Likewise, for turning spindle-shaped vessels, less resistance in turning the vessel is caused by the rudder than in ordinary vessels, in consequence of the spindle-shaped vessel having better lines for the ends of the vessel moving sideways through the water, and consequently causing less resistance to turning.

(4) The three times greater length of spindle-shaped vessels in proportion to beam than in vessels of the ordinary type gives finer lines, and the best possible kind of lines, and will cause them to pass through the water with less resistance than vessels of the ordinary type.

The gain in economy of power for propelling the vessel from this and from the facility that the spindle-shaped vessel can be rolled from side to side at the end of each trip and the bottom cleaned, we have found by hundreds of experiments to be as much as from 30 to 100 per cent, depending upon how often the cleaning of the bottom is done on other vessels.

(5) There is also less resistance from head winds in vessels of our invention in consequence of the finer lines named under head (4) above.

(6) As spindle-shaped vessels of three times the displacement of ordinary vessels can be made to draw only same depth of water, and be as practicable for going over bars and into harbors as ordinary vessels, and as the capacity of room inside increases as the cube of dimensions, while the outside surface and skin resistance to propulsion increase only as the square of dimensions, the increase in displacement of a spindle-shaped vessel to three times that of an ordinary vessel (by its being of three times greater length with same draught of water) will enable engines to be placed in it of three times the horse-power whilst the skin resistance will be increased by but 2.08 times, which will give an advantage of nearly *fifty per cent* in economy of power from this cause for increasing the speed of such a spindle-shaped vessel as compared to such as are employed of the ordinary type.

Our observations in hundreds of experiments with vessels constructed according to our invention have shown that a combination of the elements named under subheads (1), (2), (3), (4), (5), and (6) of this head 4th, for giving greater economy of power in propulsion, are sufficient to enable vessels constructed according to our invention to make passages across the Atlantic in about four days, and almost as quickly when the Atlantic is in its most boisterous state as in calm weather; whilst it is universally known that vessels of the ordinary type take time in proportion as the force of the wind and the length of the waves, from about 6 days in calm weather to 7, 8, and 9, and even 14 days in boisterous weather.

5TH. CONCERNING SAFETY FROM FIRE AND FROM SINKING IN VESSELS CONSTRUCTED ACCORDING TO OUR INVENTION.

As regards safety from fire the spindle-shaped hull and deck or decks, cabin or cabins, in combination with it, and the state rooms for passengers, will also be constructed of metal, consequently there can be no danger from the vessel taking fire.

Concerning cargo and coal for supplying the propelling power, this will be carried in some thirty water-tight compartments, and as fire would not be likely to take place in more than one of these places during a single voyage of four days, and as this could be flooded without danger to the vessel or to cargo or coal in the other parts of the vessel, it may be considered that in such vessels there will be absolute safety against the loss of the vessel or any material part of the cargo or coals from fire.

As regards safety from sinking.

(1) For keeping a spindle-shaped vessel with deck or decks, cabin or cabins, in shape, numerous bulkheads are required to be placed at about equal distances apart for the whole length of the vessel, thus dividing it into some forty different compartments.

Some twenty-six of said compartments will be in the middle two-thirds of the spindle-shaped hull, over which the deck or decks, cabin or cabins, are placed, and each of these twenty-six compartments will be subdivided by decks into several separate compartments; and most of the lower parts of the compartments, where the engines and boilers may be, will again be subdivided into three compartments by longitudinal constructions, so that in all there will be no less than about one hundred and fifty different completely water-tight compartments (the spindle shape of hull not twisting about to loosen the bulkhead attachments to vessel, as the ordinary type of vessel does in moving amongst waves); the bulkhead can be made as tight and remain as tight as the seams of a circular steam boiler.

With such a great number of perfectly water-tight compartments, the vessel might run into vessels or icebergs, or be run into by other vessels several times on a voyage, and still would keep afloat.

(2) The absence of the vessel pitching amongst waves, absence of rolling amongst waves, absence of receiving shock from waves, and absence of water rising up on the vessel farther than the bottom of the cabin attachments to the spindle-shaped hull, as explained under heads 2d and 3d above, will prevent any danger arising to the vessel from pitching, rolling, shocks from waves, and from water coming entirely over the vessel, all of which are very considerable dangers in vessels of the ordinary type.

It will be seen from all that is above stated under this head, 5th, concerning the safety of vessels of our invention, that even if such a vessel should become disabled in the propelling arrangements, it would turn into the trough of the

sea and lie in perfect safety like an island in the track of steamers on the Atlantic, and with plenty of provisions on board, time would be given to get the vessel to its destination without danger to the vessel, passengers, or cargo.

Such vessels as we have invented and experimented upon for perfecting them for ocean navigation previous to putting the invention into practical use (in the first instance) for transportation of passengers and light goods on the Atlantic Ocean, between the United States and Europe, would convert the Atlantic Ocean, in its most boisterous state, into a track for the vessels which would be as smooth as a railway, at a speed (if considered advisable) which would make passages between the United States and Europe in not exceeding four days, with as much safety and comfort to passengers during the voyage as if they were residing in a first-class New York hotel, whilst all the world besides have not in thirty-five years (the period which has elapsed since our first patent for spindle-shaped vessel was granted), nor in all previous time, succeeded in making a vessel for coping with the Atlantic in its most boisterous state (or in a state in which it is found in almost every voyage) in any way, except that the best vessels in use up to the present time are most uncomfortable and far from safe, and with at best but two-thirds the speed that can be easily attained by vessels of our invention; and becoming less and less as the waves increase in size on the Atlantic.

Our invention is in fact enormously superior in economy of transport and comfort (and almost equal to the ordinary practice in speed) to a railway track for transportation of passengers and merchandise, for the reasons (1) that the most boisterous Atlantic is made a track, by vessels of our invention passing over it, as smooth or smoother than the best railway track, and from the absence of rolling and pitching passengers will be as comfortable in crossing the Atlantic in such vessels as if they were in a first-class New York hotel; and (2) no enormous first cost or repairs are required to the ocean track as there is to the railway track, consequently none of the expenditures for the first cost and repairs of a track are required for transporting passengers and cargo by vessels of our invention, the machinery and a hull, etc., of vessels corresponding with locomotives and cars of railways will cost no more originally and for repairs and renewals than the locomotives and cars of a railway cost originally and for repairs and renewals.

With vessels of our invention, with such speed, safety, and comfort as I have described above as inherent in the principles of our invention, placed on the Atlantic principally for carrying passengers (which could be done at not much over half the rates for passage money that are being charged at present for crossing the Atlantic in the present type of steamer) the traveling between the United States and Europe would most likely in a short time be increased from *twenty to one hundred times* the extent that it is at present, and this would be a great national benefit for the citizens of the United States as well as for Europe.

The foregoing results are ascertained facts, demonstrated by hundreds of experiments conducted under all conditions. In further proof whereof, deponent will refer to affidavits of James Murray, engineer, Walter S. Wynans, engineer, who are cognizant of the facts. It will, therefore, be evident that the invention has passed from the experimental stage, and it only remains to make the results of deponent's lifework serviceable to mankind, and particularly to the people of the United States, by the construction of a fleet of ocean-going vessels for transatlantic passenger traffic, to sail under the flag of the United States.

To this object deponent proposes now to devote himself, provided the Congress of the United States will, by authorizing the grant of letters patent for a sufficient period of time, enable deponent to put his plans into execution. Although deponent has the means to carry out this project, and is desirous of so doing, it will be evident, from consideration of the magnitude of the enterprise, that an extended period of time will be required, during which deponent prays such protection as will enable him to pursue to the end that object to which deponent has devoted the greater portion of his lifetime.

So far as deponent is aware no one in the world, other than deponent and members of his family, have attempted, or are now attempting, to develop and perfect vessels of the spindle form, and, therefore, no interests of individuals or communities will be disturbed or prejudiced in the smallest degree by the passage of an act as prayed. On the contrary, deponent submits that without the action of Congress in the manner prayed the enterprise will in all probability be checked at this stage, and all of deponent's labors and expenses be of no avail to mankind. Further, deponent submits, for the reasons now to be stated, that the passage of an act such as prayed will be of enormous advantage and benefit to the Government and to the people of the United States at large, and in particular to those interested in commerce with foreign countries.

At present the English, French, and Germans practically carry on the entire traffic in freight and passengers between Europe and the United States, notwithstanding the well-known fact that the greater part of the freight carried is American produce or property, and by far the majority of the passengers are citizens of the United States.

It will, therefore, be a matter of the utmost importance and deserving of the profound consideration of Congress that deponent should be permitted to control this invention by the grant of adequate letters patent to prevent foreign ship-owners from securing the immense benefits in transatlantic navigation.

It is evident that vessels constructed according to deponent's invention, which do not pitch or roll at sea, will be very desirable for the safe transportation of live stock, in that such live stock could be transported to any distance at a greatly reduced cost, and with perfect security against injury, thus adding largely to the extension and profitableness of this important American industry.

The fact that practically all the transatlantic steamers are under the control of foreign nations is a serious menace to the Government and people of the United States, and deponent begs of Congress consideration of the bearing of this fact upon the proposed act of Congress, whereby will be brought about, without cost of one dollar to the Government or people of the United States, the speedy construction of a fleet of vessels according to deponent's plans. For the sake of presenting fully this important branch of the subject deponent will set forth the main facts and considerations under the following several heads:

1ST. TOUCHING THE TRANSPORTATION BUSINESS BETWEEN AMERICA AND EUROPE.

This business being now almost entirely in the hands of foreigners, these foreign governments have secured for their use in case of war the services of the vessels sailing under their respective flags as cruisers against enemies and as transports for men and munitions. The enormous disadvantages in which the United States are now placed with respect to European powers on account of the conditions above referred to can not be too strongly stated.

2D. TOUCHING THE EFFICIENCY OF A FLEET OF VESSELS OF THE TYPE WHICH DEPONENT PROPOSES TO CONSTRUCT AS CRUISERS AND TRANSPORTS.

Whereas this Government has none or but few and inferior vessels which it could utilize for the purposes above stated in case of war, the object and effect of the proposed measure would be to secure to the United States the service of a fleet which on account of steadiness, capacity, "coal endurance," speed, and security against damage by reason of the water-tight compartments would be immeasurably superior to the best ocean-going vessels existing at the present day, or which could possibly be built except according to deponent's plans. Among other advantages, it may in this connection be stated that such vessel can be steered on a straight course at a moderate speed in any position amongst waves without yawing, and can be turned in any direction among the largest waves and at any speed.

The additional most important qualities required for making a more perfect war vessel than has yet been constructed, are (1) capacity for carrying coal; (2) capacity for carrying guns of the longest range and greatest power; and (3), capacity to be made shot-proof.

Regarding coal endurance, the displacement of about three times that of ordinary vessels without increased draft of water, results in a capacity for coal in proportion to resistance of vessel to propulsion greater than is had in any vessels at present in existence; the rule being that resistance to propulsion increases as the square and displacement increases as the cube, when larger vessels are constructed.

In addition to this capacity, it is not necessary that the vessel be kept constantly in motion, thereby wasting fuel, inasmuch as a vessel of the spindle-form can "lay to" in the most boisterous weather for any length of time, and can be made almost as safe and stationary as an island.

As regards rendering vessels of the spindle type shot-proof, it is evident that in the open sea it is practicable on account of the high speed of such vessel, backwards as well as forward, to keep it bow on or stern on, or very nearly so, with respect to a vessel of the ordinary type. Therefore the vessel would ex-

pose a comparatively small target to shot from an enemy. The skin plates (even at the extreme bow and stern where their angle is the greatest) would be at such a slight angle with the center line of the vessel that if the skin plates at these extreme ends were made of only one inch in thickness (which is a minimum thickness, considering the strains to be supported) a line drawn through such skin plates in the direction of the center line (which would be practically the line of a supposed shot) would be not less than one foot in length, giving a resistance for a skin plate of one inch, equal to a steel plate of one foot in thickness.

In the same way it can be shown that at any point of the hull of the vessel the minimum thickness of skin plate to give the proper strength in other respects would present a practically shot-proof wall against any shot fired in the direction of the main length of the vessel, a position which such a vessel could always maintain with respect to any other vessel in existence. Moreover, in such position, the vessel presents at every point a curved surface, causing the projectile to be deflected, and it is practically impossible to strike the hull normally at any point.

Owing to the fact that the vessel of the perfected spindle type does not pitch or roll in waves of ordinary size, great certainty and accuracy of aim could be secured.

In view of the foregoing considerations, it will be evident to persons familiar with naval affairs, that a vessel of the spindle form carrying a few guns of the longest range and largest caliber, trained half toward the bow and half toward the stern, and mounted on disappearing carriages of approved form, could in a comparatively short space of time sink any vessel of ordinary construction, without being itself in any way exposed to injury.

In such an engagement it would be practically impossible, in case there were waves of even moderate size, for a vessel of the ordinary type, which rolls and pitches in small waves, to strike so small a target as the end of a vessel built according to deponent's plans.

Without at this point entering further into particulars, deponent will state that he has worked out and practically determined all the details of construction of such vessel whereby with a maximum thickness of three inches, and this only on a small portion of the conical bow and stern, the skin plates of all parts of the hull would have a resistance equal to the resistance of a steel plate three feet in thickness when fired at point blank; in other words, that such vessel would be absolutely impenetrable when kept head on or stern on, as can easily be done. And this result can be attained without increasing the cost of the passenger vessels more than about 3 per cent and without increasing the displacement of the vessel more than about 2 per cent.

3D. CONCERNING THE RELATION OF THE SCHEME PROPOSED TO THE GENERAL POLICY OF THE GOVERNMENT OF THE UNITED STATES.

The policy of our Government has always been, and probably will continue to be, to avoid the expenditure of large sums of money in the maintenance of standing armies and large fleets of vessels; but certain events of recent date have brought into prominent notice the great disadvantage under which our people labor in their dealings with other nations, on account of being unprepared in respect of naval strength in case of war. This subject is now justly receiving considerable attention, and it is a notorious fact that, setting aside the single item of pensions, the Government is confronted with the apparent necessity of expending for naval equipment, and particularly for the armoring of war vessels, a larger sum of money than for any other item of public expense.

It will not, therefore, escape attention that if the Government of the United States could control, in the event of war, a fleet of vessels of the type proposed by this deponent for transportation of passengers between the United States and Europe, the disadvantage above referred to would be completely removed, and that the United States would be placed, in their dealings with other powers, in a position of great supremacy.

It would be evident to the world that such a fleet as above described could meet war vessels in open sea near the European side and destroy one vessel after another, so that none of them would be able to reach our shores.

It will also be evident that nations in the position of Great Britain, which requires absolutely to keep its merchantmen afloat to maintain a sufficient food supply, would not find it practicable to maintain war against the United States,

when she had at her disposal a fleet of vessels having the capacities and fighting power above referred to.

It so happens that the passenger business between the United States and Europe is greater than that between Europe, the West Indies, Australia, South America, etc., all combined, and that while the fastest vessels are employed for passenger business between the United States and Europe, much smaller and slower speed vessels answer the requirements of traffic between Europe and the other named countries.

From these considerations it follows, that should the United States Government take measures enabling it to control a fleet of vessels constructed according to deponent's plans, she would have at her disposal a more efficient fleet for cruisers, transports, and war vessels, than could be placed at the disposal of all the European nations combined. These advantages can, and deponent believes will, be realized under the plan proposed without any expense whatever to the Government and people of the United States.

It is therefore reasonable to suppose, as deponent submits, that if the United States takes measures to secure the services of a fleet of vessels of the type herein proposed, she would, while increasing the passenger business between Europe and America from twenty to a hundred fold, place herself at the head of the nations of the world in respect of the power and capacity of her fleet.

Regarding the expense which deponent has incurred in constructing and altering vessels, in conducting experiments, and in other matters connected with the development of the invention, deponent says, that such expenditures aggregate up to the present time a sum nearly equal to four millions of dollars. For the purposes above indicated deponent has maintained, and still maintains, a large staff of engineers, constructors, draftsmen, navigators, etc., at an average cost during the last twenty years of about seventy-five thousand dollars per annum.

For all this outlay deponent has never received any benefit or pecuniary return whatever.

In conclusion, deponent says that the ordinary lifetime of letters patent, which is amply sufficient in the great majority of cases to enable an inventor to develop, perfect, and introduce his invention, and to reap a fair benefit therefrom, is utterly inadequate to the present case, which on account of the magnitude and intricacy of the subject has required upwards of thirty-five years and an expenditure of nearly four millions of dollars simply to investigate fully the principles of construction and action of vessels of the new type, and to demonstrate, as has now been done to a certainty, that these principles warrant the invention being put into actual use; that the results obtained convince deponent, and others familiar with those results, that a greater stride in advance of present practice in ocean navigation has been made than the united efforts of constructors and shipbuilders the world over have been able to accomplish in all past time; that unless Congress, duly considering the great merit and justice of the case, will remove the bar, existing by reason of the publication of previous patents issued to deponent and members of his family (which patents, while they set forth the principles of the invention, do not by any means disclose all the important information which deponent has gained in an experience of thirty-five years) no benefit whatever will accrue to deponent for all his long-continued effort and enormous outlays, and the control of the invention for transatlantic service will not be in the hands of a citizen of the United States for enabling the Government of the United States to secure great naval supremacy without incurring the cost of building vessels. On the contrary, should Congress refuse to pass an act such as prayed for the purpose of enabling deponent to control, for a limited period, his perfected invention, deponent believes that (after his having been obliged for showing to members of Congress the merits and justice of the case to disclose by his affidavit his knowledge of the perfected invention, obtained by the labor of the best part of his life and of a very large expenditure of money, with full confidence that in the interest of justice to an American citizen and enormous benefit to the United States Government, Congress would not refuse to pass the act prayed for) the benefits of the invention will be secured wholly or in great measure by other individuals and governments, in countries where the art of shipbuilding receives greater encouragement and flourishes to a much greater extent than in the United States.

WILLIAM L. WINANS.

Sworn to and subscribed before me this fifth day of April, 1892, as witness my hand and consular seal.

[SEAL.]

HARRY D. WARNE,
*Consular Agent of the United States of
America at Brighton, England.*

In the matter of the proposed application of William L. Winans for letters patent of the United States for improvements in and relating to spindle-shaped vessels.

AFFIDAVIT OF JAMES MURRAY.

KINGDOM OF GREAT BRITAIN AND IRELAND, *City of London, England*, ss:

James Murray, being duly sworn, deposes and says that he is a citizen of the United States; is 80 years of age; is by profession an engineer, and has been for the past thirty years associated in the business of William Louis Winans.

Deponent is thoroughly conversant with the principles of construction of spindle-shaped vessels according to the invention of said Winans, and has assisted in conducting numerous experiments with such vessels to determine the exact condition, dimensions, lines, proportions, trim, and other details necessary to perfect that type and to realize in practice its theoretical advantages. Such experiments have been conducted in all conditions of wind and weather, and observations thereof have been taken by competent experts with scientific accuracy. The information gained from such experiments has been applied in actual construction and practice, and all theoretical considerations have been verified by test, with the result that, in deponent's judgment and opinion as an expert, the success of the spindle type of vessel constructed according to the present improved plans is demonstrated beyond any doubt, and that from such plans and working drawings it is now possible to construct vessels for ocean passenger service which will possess extraordinary advantages over any vessels of the ordinary type now in existence or which could possibly be constructed according to such type.

Deponent has read the affidavit of William L. Winans dated 5th of April, 1892, and says that the matters therein stated in respect to the experiments made and conclusions reached, the stability of the vessel amongst waves, whether stationary or moving in any direction with reference to such waves, the speed of such vessel, its coal endurance, its economy of power and cost of construction, its security against danger from fire and against liability of sinking, and its small resistance to propulsion relatively to its displacement, are true of deponent's knowledge.

Deponent further says that Mr. Winans has associated with him in this business men skilled and competent in engineering, navigation, construction, and the like, for prosecuting the work and experiments in the most thorough and expeditious manner.

JAMES MURRAY.

Sworn to and subscribed before me this 5th day of April, 1892.

[SEAL OF U. S. CONSUL.]

FRANCIS W. FRIGOUT,
*Vice and Deputy Consul-General of the United States
of America at London, England.*

In the matter of the proposed application by William L. Winans for letters patent of the United States for improvements in and relating to spindle-shaped vessels.

AFFIDAVIT OF WALTER SCOTT WINANS.

KINGDOM OF GREAT BRITAIN AND IRELAND, *City of London*, ss:

Walter S. Winans, being duly sworn, deposes and says that he is a citizen of the United States; is 51 years of age; that he has been for more than thirty years past engaged in work connected with the development of vessels of the spindle type, and has had special charge of the conduct of experiments with such vessels under the supervision of his late father, Ross Winans, and of his brothers, Thos. and William L. Winans; that he is thoroughly conversant with the history of the development of this invention, and with all the details of the business; that he has read the affidavit of William L. Winans, dated fifth of April, 1892, and that the statements therein made relative to the progress of work upon vessels of this type, the results obtained and the advantages secured in vessels of this type, as demonstrated by actual test, are true of deponent's knowledge.

WALTER S. WINANS.

Subscribed and sworn to before me this 5th day of April, 1892.

[SEAL.]

FRANCIS W. FRIGOUT,
*Vice and Deputy Consul-General of the
United States of America at London, England.*

EXHIBIT B.

EXTRACT FROM HEARING BEFORE THE COMMITTEE ON PATENTS.

Mr. LAPHAM. What has been developed by these experiments as to a vessel that has been cut in rough water?

Mr. MAURO. I will refer that question to Col. Latrobe, who is present, and who has been on these vessels.

The CHAIRMAN. We should like to hear from Col. Latrobe.

Col. OSMUN LATROBE. I have been upon all of these vessels, except the one built in St. Petersburg. The most valuable experiences were obtained with the largest of those built—namely, the *Ross Winans*, 256 feet long by 16 feet in diameter, built in London, and the *Walter S. Winans*, the boat built in France. I think the vessels have probably made five hundred experimental trips out into the German Ocean and English Channel, and I have been on about two hundred of them myself. We had with us a very scientific staff to test all the questions involved. These vessels have been tested in every condition of wave and sea. We have waited for months and months in order to get waves of a particular height, and so obtain trails of vessels in each particular condition of wind and wave, with a distribution of weights, and with the arrangement of propellers, and all the circumstances which could establish the facts sought for. That course of experiments has largely contributed to the grand total of four millions of money.

Mr. LAPHAM. Smaller vessels can be built, I suppose, and be equally serviceable.

Col. LATROBE. Yes. Mr. Winans built one vessel in St. Petersburg about 50 feet long; he built one in Baltimore 250 feet long; and built another in France 72 feet long, afterwards extended to 120.

Mr. BUCHANAN. How did this largest vessel that you went on behave?

Col. LATROBE. Admirably. Her steadiness under proper conditions of trim was such that a tumbler of water, filled up to the top, and standing on the table, did not spill a drop; at the same time other vessels near by were pitching and rolling.

Mr. BUCHANAN. When you came to a wave you would run through it?

Mr. LATROBE. Yes; it was very curious to watch the penetration of the long bow into the waves, and how it would destroy them; it seemed to break the waves, flatten them out, and very little water came upon deck. We had a very dry deck always. If at any time particular features of vessel or machinery did not answer, alterations would be made. Two or three times these vessels were cut in halves and lengthened. The vessels have often had to be taken into dry docks and machinery altered, boilers and engines changed, increasing their size and altering their character, methods of propulsion changed, and very many things done which cost money. That accounts for the great expenditure.

Mr. BUCHANAN. We can account for that. What we want to know is in regard to the behavior of the vessels.

Col. LATROBE. The behavior of the vessels was beyond reproach. There is not one thing that is not decided in regard to the behavior of such vessels. Mr. Winans can now put his money into this thing with as much absolute certainty as if he were buying a coat. One of the smaller boats which he built at Havre, France, and which came across the channel to England at a time when the weather was very rough, brought over, among other guests, a correspondent to the *London Post*, who, in his account of the voyage, two or three days afterwards, in the *Post*, said he did not see a spoonful of water on the deck of that little boat, though she crossed the channel from Havre to New Haven, England, just in the very worst part of it. We started out with a tug accompanying us, because we did not know whether we would get over or not, but in a short time the tug was left behind.

Mr. BUCHANAN. You went on in safety?

Col. LATROBE. We kept right on. We did not take one tumblerful of water on our deck, although we did not have a high, built-up deck then, but simply a flat surface with a wire railing.

Mr. BUCHANAN. Are you sure it was water in that tumbler? (Laughter.)

Col. LATROBE. It might have been mixed a little.

The CHAIRMAN. Was there anything peculiar about the steering or propelling apparatus?

Col. LATROBE. There is not now. Of course Mr. Winans tried all sorts of experiments. The first boat that was built in Baltimore consisted of two cones

with their bases close together, with a great drum in the middle, and on the edge of this drum propeller blades. This was a very expensive experiment, but was not a success.

Then another boat that we built in England had two great semi-submerged propellers, one at each end, with a shaft running the whole length of the vessel in the center, and experiments with that means of propulsion cost many hundred thousand dollars. It was not successful. Then he came to one screw submerged aft, then twin screws, then twin screws with multiple propellers; that is, several blades on each shaft, and that is now believed to be the practical solution of the question for large vessels. You see, with large weight and large skin surface to drive, large propeller surface is required, and that can only be secured by multiplying blades when it is not practicable to increase their size. The performance of these vessels at sea, gentleman, was simply inconceivable in steadiness, in ease of movement, in dryness, and in every other quality that is desirable.

Mr. HAMILTON. How long since these trips were taken?

Colonel LATROBE. Two of these vessels are now in Southampton waters and ready for experimenting from day to day.

Mr. HAMILTON. But I speak of these voyages you mention.

Colonel LATROBE. It was only a few years ago. For about ten years I went on her month after month.

The CHAIRMAN. You spent a long time in these experiments?

Colonel LATROBE. Oh, yes. I went to the war in 1861, and after the war to Russia and England, and was associated with Mr. Winans in carrying on these experiments. I am now looking after his interests here in this connection.

Mr. LAPHAM. Would you be willing to take your family on that boat?

Col. LATROBE. Indeed I would.

Mr. LAPHAM. You would prefer her to anything afloat, would you not?

Col. LATROBE. So would everybody. You can not burn these vessels; you can not sink them; you can not bring them to grief in any ordinary way. They do not pitch and roll like ordinary craft; they even lie in the trough of the sea and do not roll. We have waited for months in the North Sea to get a storm to make trials in, and when a storm came we have gone out and for hours and hours have experimented, stopping the engines so as to let the vessel fall into the trough of the sea, and with the proper adjustment of weights and trim, no rolling was experienced.

The CHAIRMAN. Is it not a great merit of this vessel that it will prevent seasickness?

Colonel LATROBE. There is no motion that will cause seasickness. She does not roll and she does not pitch. I have never seen anybody seasick on board her. We took with us frequently large parties without any seasickness among them in the roughest weather.

At 12:20 o'clock the committee took a recess in order that the members might go upon the floor of the House to vote. At 2 o'clock p. m. the chairman with two or three members of the committee came back, and the chairman stated informally and substantially that since the recess was taken he had consulted with some of the other members of the committee and was glad to state that they felt favorably disposed towards the request asked for in this hearing. After some further discussion and explanations of a general character, further consideration of the measure was adjourned to 10:30 o'clock a. m. Monday, May 2, 1892.

LIEUT. COL. CHARLES G. SAWTELLE.

JUNE 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KENDALL, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 547.]

The Committee on Claims, to whom was referred the bill (S. 547) for the relief of Lieut. Col. Charles G. Sawtelle, deputy quartermaster-general U. S. Army, have carefully considered the same and recommend that it do pass.

Your committee append the following, a part of the Senate Report No. 52 bearing upon the case:

The bill asks that said Sawtelle be credited by the proper accounting officers of the Treasury with the sum of \$126.40 in settling and adjusting his accounts as deputy quartermaster-general of the Army, that sum being the amount of internal-revenue tax due from employes of the Government employed by Maj. Gen. E. R. S. Canby in the secret service at New Orleans in the year 1865.

The claimant for relief, during the years 1864, 1865, 1866, and 1867, was on duty at New Orleans as chief quartermaster of the Military Division of West Mississippi under Gen. Canby, and of the Military Division of the Southwest and the Fifth Military District, under Gen. Sheridan.

These two officers directed Sawtelle to take charge of and disburse their secret-service funds in addition to his other duties, and the trust was discharged by claimant disbursing of such funds about \$50,000. Returns and vouchers were regularly rendered by claimant to the proper officers of the War Department for these funds, and he had no notification of any irregularity, nor did any suspicion follow until eighteen years after disbursement was made.

The amount in question appears to have been deducted by Sawtelle's chief clerk and cashier, and "corruptly retained by him," as is alleged, instead of having been transferred with other similar deductions to the Internal Revenue Commissioner. Claimant alleges that had he received any notice whatever of the deficit, prior to June 23, 1874, he would have claimed relief under the acts of June 23, 1870, and June 7, 1872, which allowed the proper accounting officers of the Treasury to "allow such credits for overpayments and for losses of funds, vouchers, and property" as might seem just, to the extent of \$5,000.

The military history of claimant is a commendable one, and the fact that during the time this sum was taken he was doing double duty in the matter of disbursing funds and that his labors were arduous, employing all his time and necessitating the employment of those in whom he then had confidence, and in view of the fact that the accounting officers would undoubtedly have credited him under the acts of 1870-'74 had claimant been aware—before the expiration of those acts—of the deficit, and in view also of the fact that claimant disbursed over \$27,000,000 from 1861 to 1883 as deputy quartermaster-general without the loss of a penny, as appears from a certificate (and his statement) of the Third Auditor, dated April 25, 1887, your committee have no hesitation in according their consent to the recommendation for the passage of this bill.

The General of the Army recommends the passage of some bill for claimant's relief, in a letter, as follows:

WASHINGTON, D. C., April 6, 1888.

Being cognizant of the circumstances set forth in the within letter (*i. e.*, letter of claimant), I recommend the enactment of a bill for the relief of Lieut. Col. Charles G. Sawtelle, U. S. Army, of the amount suspended against him by the accounting officers of the Treasury in the settlement of his secret-service fund accounts, viz, \$126.40.

P. H. SHERIDAN,
Lieutenant-General, U. S. Army.

AMENDING SECTION 766 OF THE REVISED STATUTES.

JUNE 9, 1892.—Ordered to be printed.

Mr. BUCHANAN, of Virginia, from the Committee on the Judiciary,
submitted the following

REPORT:

[To accompany S. 2171.]

The Committee on the Judiciary, to which was referred Senate bill 2171, having had the same under consideration, respectfully report the same back with the accompanying amendment:

Amend by striking out all of said bill after the word "provided," in the third line, and add the following words: "That no such appeal shall be had or allowed after six months from the date of the judgment or order complained of."

Your committee recommend that the same be so amended and passed.

○

F. F. WHITE.

JUNE 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. REYBURN, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 1030.]

The Committee on Claims, to whom was referred the bills (S. 1030 and H. R. 1208) for the relief of F. F. White, having considered the same, recommend that H. R. 1208 be laid upon the table and that S. 1030 be substituted therefor, and that it do pass.

Your committee send herewith all the papers in the case as the basis of this report.

[Senate Report No. 30. Fifty-second Congress, first session.]

The bill seeks payment in the sum of \$530 for the frame dwelling house of F. F. White, in Juneau, Alaska, taken by the United States Government for military purposes.

In the spring of 1887 F. F. White, who at that time was a resident of Alaska, located in the town of Juneau, in that Territory, a certain town lot 50 by 100 feet, which he was advised and supposed to be a part of the public domain, and fully complied with the local rules and customs in having his entry recorded and making improvements. The improvement consisted of a neat little dwelling house of three rooms. The building was well finished, both inside and outside, for that region, and at a cost of \$530, and was occupied by Mr. White and his family as a residence.

Subsequent to thus entering and improving the lot, Mr. White was notified by the collector of customs to vacate the premises, because the same was claimed to be a part of a military reservation embracing a portion of the block in which the lot was situated. And shortly an action of ejectment was brought against him and judgment rendered for the possession of the lot, including his dwelling house. The judgment was executed and White was ousted. The lot passed into the possession of the Government, and has since been used by it as a jail in which to keep prisoners pending their removal to Sitka. Mr. White testifies he was permitted to interpose no defense to the action of the Government, for the reason, as stated by the judge of the court, the land laws of the Government not being extended over Alaska, his possession could only be that of a trespasser, and that he was not allowed an appeal from the decision because less than \$5,000 was involved.

In response to the inquiry of the Attorney-General, the United States attorney for Alaska writes the following letter:

SITKA, March 6, 1890.

SIR: Replying to your letters of December 9 and February 4, relative to an order of the court ousting W. J. Henning from a certain reservation in Juneau, Alaska, permit me to say I have found it very difficult to ascertain the facts.

It seems that Aaron Ware, Henry States, F. F. White, H. J. McDonald, W. J. Henning, and Lewis Nado were living on the piece of ground claimed as a reservation. States was living in a house erected by the soldiers and owned by the Government, but he had made extensive additions to it. The others had erected their own houses. Suits were instituted and all were ousted except States. (The McDonald suit was dismissed upon your instructions.) The decree of the court was absolute and car-

ried the buildings with the real estate. These buildings were placed in the hands of the collector and are now under his control.

From all the facts I believe the parties ought to be given their respective houses, and as Henning suggests, they could, without injury to the Government, be permitted to occupy the reservation until such time as the Government had use for it. But the decrees having been executed, and the buildings having passed into the hands of a collector, I can think of no legal means by which either the court or attorney can give the claimants any relief.

I would suggest that the collector of customs be authorized and empowered to enter into agreement with the respective owners, giving them possession of their buildings, making them tenants at will or by sufferance of the Government. To give them the ownership of the houses could only be done by modifying the decree in that respect. And it seems to me it is too late to do that. If it can be done please so advise me and I will make the proper application to the court. I will add that I think an injustice has been done these people, and especially so when I remember that the Government can have no use for their little houses.

Very respectfully,

C. S. JOHNSON,
United States Attorney.

The ATTORNEY-GENERAL,
Washington.

The inclosure from Mr. Heid I have just received. It explains itself.

C. S. J.

From which the following is taken:

C. S. JOHNSON, Esq.,

United States District Attorney for District of Alaska, Sitka, Alaska:

DEAR SIR: Your letter was received. You ask me to give you such information at my command which may tend to clear up the disturbing question (at Juneau, Alaska) "of military reservation or not."

In order to make the matter plain I must go back some years. In October, 1880, gold was first discovered in the locality and vicinity where now is situated the town of Juneau (formerly called Rockwell, Alaska). In the month of December following many miners came from Sitka, Fort Wrangel, and other points to this place. The U. S. S. *Jamestown*, Henry Glass, commander, was then stationed at Sitka, Alaska. Commander Glass and many of his officers, with some of their marines, also came here from Sitka at the time of the "gold stampede." The officers at once interested themselves in the new discoveries and decided to camp here.

As you will see, by referring to the annexed certified copies of record, Commander Glass, on May 2, 1881, wrote out a "notice of reservation," reserving for garrison purposes lots 1, 2, and 3, in block 7, but for some reason the notice was never posted on the ground, nor was it recorded here in the recorder's office until May 23, 1885. On said 23d day of May, 1885, H. E. Nichols, lieutenant commander U. S. Navy, made an additional record of this so-called military reservation, claiming for the Government all of block 7, in the town of Juneau, Alaska, excepting lots 4, 5, and 6, that is to say, lots 1, 2, 3, 7, and 8 of said block 7.

The public had no notice of a reservation claimed by the Government, and no one here knows of any expenditure upon said reservation made by the Government. * * *

The most claimed by any one settler upon the tract of land in question is 50 by 100 feet. The parties residing upon this tract of land entered upon it in good faith, erected their cabins, as is customary on the frontier, for the purpose of residing therein. They expended their money in good faith, believing in the established policy of the Government to, in all cases, protect the interests of the early settlers on the frontier.

* * * * *

The settlers referred to are all good, law-abiding citizens. They attempted to establish their claims in Judge Keatly's court in suits brought against them by your predecessor, Whit. M. Grant, formerly United States district attorney; but Judge Keatly would not allow the cases to come to a question of fact, but ruled that, since the land laws of the United States had not been extended over the district of Alaska, they were all trespassers; the amount involved in each case being less than \$5,000 no appeal would lie, and the consequence is that their homes were taken away from them without, I might say, a hearing. The case of Mr. Henning stands upon the same footing with the rest. I do not think the tract of land in question in the first instance is large enough for a military reservation, being 150 by 150 feet in size, and then again, it is a question if the Government desires to establish a military post here.

August 12, 1890, the district attorney again writes the Attorney-General as follows:

ATTORNEY-GENERAL,
Washington, D. C.:

SIR: Replying to yours of May 14, above letter and number, in the case of ejectment against F. F. White, I beg to say I have obtained all the information I possibly can in this and the other cases similarly situate, and hereby submit it.

It seems the cases were commenced upon the request of A. K. Delaney, then collector at Sitka. In February, 1889, he had notice served upon the occupants of the so-called military reservation to vacate the same. I inclose a copy of the same. He then notified the United States attorney, Whit. M. Grant, of the facts, and requested that suit be instituted in ejectment. Mr. Grant referred the matter to the Solicitor of the Treasury (see his letters of December 26-28 and February 7, 1889).

I do not find the Solicitor's letter of instructions, but from Grant's letters I infer he was directed to proceed.

I note a letter of the Attorney-General under date January 17, 1889, "H. H. 1171, 1884," in which he protests against further procedure in the cases. It seems, however, that the cases were proceeded with, decrees obtained, and the parties ousted.

Inclosed I hand you copies of the complaint and decree in the Henning case. The decree in the State's case was most exhaustive, I am informed, but the judge, Kealty, carried it off with him, as he did most of them, without their having been entered on the judgment docket.

From all I can learn I am unable to see that the ground in dispute was ever legally reserved, except while actually occupied by the military. When they abandoned the same it became public domain. I think the whole trouble has grown out of a desire (perhaps laudable) on the part of the citizens of Juneau to hold this desirable property for public buildings in case the United States should ever desire to build any such.

Very truly yours,

C. S. JOHNSON,
United States Attorney.

And, lastly, Hon. John B. Cotton, of the Department of Justice, on April 22, 1891, writes Hon. William P. Frye that on the 15th of the month he had received a communication from the district attorney of Alaska, in reply to one of the Department of February 16, 1891, touching the White claim. From Mr. Cotton's letter the following quotation is made:

"In his letters he says that the case referred to, namely, Mrs. White's, stands upon the same condition as that of W. J. Henning *et al.*, and he calls attention to his letters to the Attorney-General under date of March 6, 1890, and August 12, 1890 (letters above cited). On the receipt of the district attorney's letter I caused the files to be searched and found the letters referred to by the district attorney, and I herewith inclose copies of the same. The district attorney seems to agree that an injustice has been done to these parties, but that the decree of the court having become absolute, it is too late to have the same reopened. If this should be the case, is there any other relief except through Congress?"

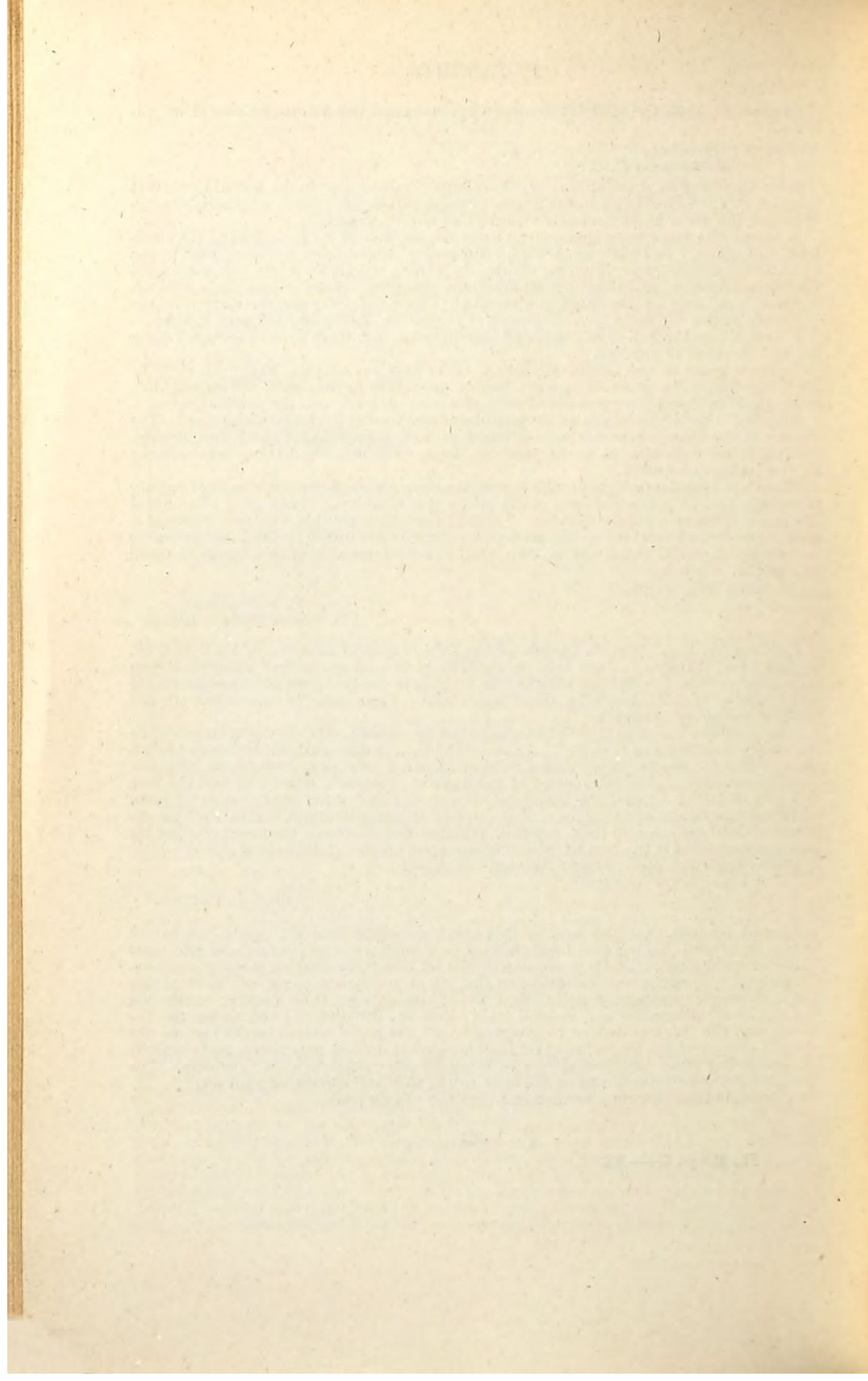
"I am, yours very truly,

"JOHN B. COTTON."

It will be seen that the fact of this small parcel of land 150 by 150 feet, in the town of Juneau, having ever been claimed as a military reservation is of the most questionable kind; that such possession of it on this claim had for many years been abandoned; that there was nothing on the lot or in such records of lands as was kept to suggest and advise claim; that Mr. White entered it in manner prescribed by the local authorities and in good faith; that the Government had no use for the land, and the suit was carried to judgment and the party ousted in the face of the direct protest of the Department of Justice against further procedure, and the Government has since been using the building for the confinement of prisoners. The house thus appropriated was at the time worth \$530 and should be paid for.

The committee therefore recommend that the bill do pass.





EMILE M. BLUM.

JUNE 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. REYBURN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1520.]

The Committee on Claims, to whom was referred the bill (H. R. 1520) for the relief of Emile M. Blum, late commissioner-general of the United States to the Barcelona exposition, submit the following report:

This bill is intended to partially reimburse the late commissioner-general to the Barcelona exposition for the expenses incurred in connection therewith, by allowing certain necessary expenses which the appropriation was unable to meet, and providing the payment of a salary of \$5,000 for his services, in view of the fact of his successful administration of the office, and that he was obliged to pay much more than that sum in order to prepare the United States sections and install the exhibits.

The Department of State reports:

WASHINGTON, D. C., *May 24, 1890.*

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant relative to Senate bill 3609, for the relief of Emile M. Blum.

This Department has already considered the subject in connection with a similar bill introduced in the House of Representatives and referred hither by the House Committee on Claims.

I inclose herewith, as embodying the views of this Department on the subject, a copy of a letter addressed to Hon. Edward J. Dunphy, of the Committee on Claims, by the Assistant Secretary of State, under the date of the 8th instant.

Mr. Blum rendered the Government excellent service as its representative at the Barcelona exhibition and incurred legitimate expenses in his representative capacity which the appropriation was insufficient to meet.

I have the honor to be, sir, your obedient servant,

JAMES G. BLAINE.

Hon. JOHN SHERMAN,
Committee on Foreign Relations, United States Senate.

WASHINGTON, D. C., *May 8, 1890.*

SIR: I have the honor to acknowledge the receipt of your letter of the 28th ultimo, respecting House bill No. 9611, for the relief of Emile M. Blum, late commissioner-general of the United States to the Barcelona exhibition.

Mr. Blum made a very excellent showing for the United States at Barcelona. Our section was regarded as the handsomest, and was the subject of many flattering testimonials.

Mr. Blum was very energetic in the performance of his duties, and was highly commended by the American exhibitors for his services in their behalf.

Out of the seventy-six manufacturers represented, twenty received gold medals, nineteen received silver medals, sixteen received bronze medals, and nine received honorable mention.

The number of American exhibitors was much greater than was expected at the time the appropriation of \$25,000 was made, and this sum proved inadequate to meet the increased expense.

Mr. Blum met the extra expense out of his own funds, and now asks relief.

The principal items of expense borne personally by Mr. Blum were those for advertising, traveling expenses incurred in visiting manufactories, and rent of furniture.

The act of appropriation made no provision for a compensation for the commissioner, but this Department knows of no reason why compensation might not now be provided.

I have the honor to be, sir, your obedient servant,

WILLIAM F. WHARTON,
Assistant Secretary.

Hon. EDWARD J. DUNPHY,
House of Representatives.

Mr. Blum was appointed commissioner-general to the exposition immediately after the passage of the joint resolution of April 11, 1888, having theretofore been designated as the honorary commissioner by the Secretary of State.

As the opening of the exposition was set for the following month, May 1, extraordinary exertions were deemed necessary to secure representative exhibits, thus entailing greater expense than would have otherwise been required, and Mr. Blum spent day and night in traveling, conferring with manufacturers and chambers of commerce in his endeavors to give widest publicity to the fact of our Government's intention to take part in the exposition, the first ever held in Spain.

As soon as possible Mr. Blum sailed for Spain where, upon arriving at Barcelona, he found that the goods which had been shipped by forty-four manufacturers to their own agent had been abandoned by him and lay on the wharves, exposed to the weather, without shelter. The extra expense of securing the release of these goods and their installation, which was directed to be done by the Department of State, took from the available funds \$5,000 which had not been anticipated, thus disarranging all the plans for the expenditure of the amount of the appropriation, rendering it insufficient to meet the necessary expenses.

Added to this was the fact that the unusual and heavy demands for labor to install the exhibits led to a succession of strikes at Barcelona, and advantageous contracts made by Mr. Blum were broken over and over again, entailing heavy extra expense in order to have the United States section at all. These expenses, amounting to over \$7,500, were met from the private resources of Mr. Blum, and he asks that he may be allowed a salary at the rate which has in similar cases been allowed commissioners-general to expositions, to in a measure reimburse him for what he paid out in the interest of the Government.

The within letters from the Department show that the exertions of Mr. Blum met with successful results, and that the appropriation was insufficient to meet the necessary expenses incurred as above stated.

Mr. James M. Seymour, jr., was appointed assistant commissioner, and sent over by the Department to the exposition in September, 1888, after it was well under way, to examine into and report upon the mechanical exhibits, he being an expert. He was merely allowed his expenses, and the bill proposes to give him \$2,500 as a salary for his services.

The committee recommend the passage of the bill.

OWNERS OF SCHOONER WALTER B. CHESTER.

JUNE 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. REYBURN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 4507.]

The Committee on Claims, to whom was referred certain findings of fact heretofore made in the matter of the schooner *Walter B. Chester* by the Court of Claims and duly certified by the clerk of said court to the Committee on Claims of the House of Representatives, respectfully report:

A bill was introduced in the first session of the Forty-eighth Congress for the relief of owners of this schooner and was subsequently referred by the Committee on Claims to the Court of Claims, pursuant to the provisions of an act approved March 3, 1883.

From the findings of fact, as ascertained by the Court of Claims, which findings of fact are hereto annexed, it appears that a collision occurred off the coast of Virginia, at night, between the U. S. S. *Vandalia*, and a certain schooner called the *Walter B. Chester*, owned entirely by citizens of the United States, and that the loss incurred to said owners by reason of said collision is found by court to be \$10,501.75. Relief is asked at the hands of Congress for the amount of their said damages.

From the said findings of fact by the Court of Claims it further appears that the two vessels were mutually in sight of each other for four minutes before the happening of the collision. That at the time of their mutually sighting each other they were sailing and steaming respectively on lines or courses which were nearly parallel and in opposite directions, each vessel having the other on its starboard or right-hand side.

It further appears from said findings of fact that so long as the two vessels continued to sail and steam respectively on the said lines of approach, that their position was one of absolute safety, but that this position was changed into one of imminent peril and subsequent collision by the action of the Government vessel, the helm of which was put aport by reason of which the courses of the two vessels instead of being parallel was made to intersect, and that the collision resulted therefrom.

It further appears from said findings of fact that the change in question was made by the officers of the *Vandalia* without any accurate knowledge of the whereabouts of the schooner, and without seeing the said schooner, although the lights of said schooner were at all times in sight and visible.

It further appears from the said findings of fact that the cause of the

failure to see the lights of the said schooner by the officers of the *Vandalia* was occasioned by the fact that they failed to look to their star-board or right-hand side where the schooner was, but that instead thereof they looked to their port or left-hand side.

It further appears from the said findings of fact that all the information in regard to the whereabouts of the lights of the said schooner was derived entirely from the men on lookout on board of the *Vandalia*, and that said men instead of being seamen or skilled persons were landsmen or inexperienced persons and unsuitable for the duty in question.

It further appears, from the said findings of fact, that the speed of the Government vessel, which was a steamer, was not checked until the collision had occurred, nor was there any endeavor on the part of the officers of the *Vandalia* to locate the schooner by diminishing the steamer's speed, ascertaining her whereabouts, and then maneuvering, but that instead thereof, the said steamer with unabated speed and in ignorance of the true whereabouts of the schooner was so maneuvered as to precipitate her across the course or path of the said schooner and that the collision resulted in consequence thereof.

It further appears from the said findings of fact that there was no movement or change of course made on the part of the schooner that tended to cause the said collision.

All of the facts in relation to this collision having been judicially ascertained by the Court of Claims on the above reference, and it having been made to appear thereby that the collision was entirely due to the negligence of the Government vessel, and also that the damages to the schooner amounted to \$10,501.75, an appropriation of the said sum of money by Congress for the relief of the said owners is respectfully recommended.

[Court of Claims, Congressional case No. 65. Deering Donnell *et al.*, owners of the schooner Walter B. Chester, *vs.* The United States.]

FINDINGS OF FACT.

At a Court of Claims held in the city of Washington on the 28th day of January, A. D. 1889, the court filed the following findings of fact, to wit:

This case having been referred to the Court of Claims by the Committee on Claims of the House of Representatives, pursuant to the provisions of an act approved March 3, 1883, and found on page 485 of the 22d volume of the Statutes at Large, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," was brought to a hearing the 15th day of January, 1889. Theodore M. Etting, esq., appearing for the claimants, and the Attorney-General, by his assistant, Lewis Cochran, esq., appearing for the defense and protection of the interests of the United States.

The court having heard the counsel and considered the evidence do find the facts to be as follows:

I.

At twenty minutes after 8 o'clock in the evening of the 13th day of November, year 1880, a collision occurred between the United States sloop of war *Vandalia* and the schooner *Walter B. Chester*, a merchant vessel of the United States, hailing from the port of Wellfleet, in the Commonwealth of Massachusetts, and owned by citizens of the United States as hereinafter set forth. This collision took place off the coast of the eastern counties of Virginia, 13½ miles south-southwest one quarter west (magnetic) of the Winter Quarter Shoal Light-Ship, and within sight of Assateague light. The owners of said schooner were: Deering Donnell, Edmund Freeman, Stillman Brown, Thomas Symonds, Thomas S. Symonds, Samuel S. Kinsman, Joseph R. Smith, Mrs. Louise Eldridge, Timothy L. Mayo, Richard A. Atwood, James Sweet, Solomon

B. Rich, George Baker, Freeman A. Snow, Samuel C. Chipman, David Y. Pierce, Asa H. Furvere, Benjamin Brown, and Richard R. Freeman, citizens of the United States and of the States of Maine, New Hampshire, and Massachusetts; no part of the claim has ever been paid

II.

Before and at the time of the collision the weather was cold, rainy, and threatening the atmosphere was far from clear, and at intervals, especially during rain squalls, it was very thick. The sea was moderate; a strong wind, known by seamen as a full, topsail breeze, was blowing from about north-northeast.

III.

Just prior to the events hereinafter set forth, *Vandalia*, under steam alone, with top gallant masts struck, and everything snug for bad weather, was making against the wind and sea 7 knots, or a little more, per hour. Her compass course was northeast one-half north.

At the same time the *Walter B. Chester*, with the wind varying from her starboard quarter to dead aft, was running at about $8\frac{1}{2}$ knots per hour. Her compass course was southwest one-half south.

The two vessels were then approaching each other at something over 15 knots an hour, or more than 1,500 feet per minute. The position of the two vessels as shown by their compass courses would be upon parallel lines very close together, each being bound for the point left by the other.

IV.

At no time after sighting *Chester* until after a collision became inevitable were the engines of *Vandalia* slowed or stopped. They were stopped either at the moment of the collision or instantly after. The discipline and good order upon *Vandalia* are not open to criticism except as hereinafter appears; every possible assistance was rendered by her to the schooner after the collision hereinafter described; the running lights on *Vandalia* were set and burning and she had lookouts as hereinafter mentioned. The Navy regulations in regard to collisions with merchant vessels were observed by her after the accident.

The lights on *Chester* were good; they were set and burning in accordance with law, and the lookout was efficient.

V.

Shortly after 8 o'clock on the evening in question the officers of the schooner saw ahead and about a point over the starboard bow a green and white light indicating the approach of a vessel propelled by steam, afterwards discovered to be *Vandalia*, which, they had every reason to believe, would safely pass them upon the starboard hand, should there be no change of course by either vessel.

The lights of the steam-vessel were visible further than those of the schooner, and therefore the former were seen from the schooner sooner than the schooner's lights were seen from the steamer. The schooner, running free before a following wind and sea, necessarily yawed and rolled; thus, upon such a night, confusion might occur in the minds of the lookouts on the steamer as to the schooner's lights, when sighting them (as in this case) so nearly dead ahead.

The court conclude from the testimony that when the schooner's lights were first seen from *Vandalia* they bore not far from a point off the latter's starboard bow. There was at first some doubt on *Vandalia* as to the character and bearing of the schooner's lights, but no more than was natural considering the character of the lookouts and of the weather, and any delay caused thereby was unimportant; both lights (red and green) being seen and reported ahead, the officer of the deck on *Vandalia* ordered her helm aport. This order was obeyed. The captain, coming upon the bridge as hereinafter stated, confirmed the order, which was immediately followed by hard aport while the quartermaster was still engaged in carrying out the first order. So that after *Chester's* two lights were sighted ahead *Vandalia* was steadily under port helm until she had gone off to nearly east-southeast. But prior to the order hard aport, *Vandalia* being under port helm in consequence of the prior order, the schooner's lights were reported to the captain as about a point off the starboard bow; the captain then ordered hard aport, as hereinbefore stated.

When *Vandalia* under port helm had reached nearly or quite east-southeast, a green light, which proved to be *Chester's* starboard light, was seen about one-half point off

Vandalia's port bow and close aboard; the captain of *Vandalia* immediately ordered the helm hard a starboard; this order was obeyed, and under starboard helm *Vandalia* reached about east one-half north before the collision, which occurred some thirty to forty seconds after *Chester's* green light was seen as hereinbefore stated in close proximity on the port bow.

VI.

On the *Chester*, after sighting *Vandalia's* lights and between that and the moment of collision, the following changes in the position of the schooner's wheel were made by order of the master or mate:

First. It was put up (starboard) until the vessel fell off to about southwest by south; this course was held a short time, how long is uncertain, the wheel was then—

Second. Ordered hard down (port), but before this order could be completely obeyed, the wheel was—

Third. Again ordered hard up (starboard), then it was—

Fourth. Ordered hard down (port) and the master assisting the helmsman, it reached this position just as the two vessels struck. The last order was given as the red light of *Vandalia* was sighted over *Chester's* starboard bow, that is, at substantially the same moment as that when *Vandalia's* wheel was starboarded, in consequence of seeing *Chester's* green light over the port bow.

The last order on each vessel was given *in extremis*; the result was that neither was struck amidship, that the port bow of the one collided with the port bow of the other, and that any fatal result on either side was thus avoided.

VII.

The officer in charge of *Vandalia's* deck at the time *Chester's* lights were sighted was an ensign. There were on board four watch officers senior to him. *Vandalia* had but two lookouts, one in the foretop and one on the forecastle; both were what is known in the Navy as "landsmen." The officer of the forecastle was a cadet midshipman. The said ensign had for a year and a half been accustomed at intervals to take charge of the deck on *Vandalia*, and was regarded by the captain as competent to do so.

VIII.

The captain of *Vandalia* had been on the bridge all the afternoon and evening until 8 o'clock, when he went to his cabin to mark off the 8 o'clock position; while there he heard a light reported, went on deck and to the bridge. This light turned out to be the *Chester's*.

Both the captain and the officer of the deck looked for the reported lights, but no lights were seen by either until the green light of the *Chester* was seen under the port bow just before collision, as hereinbefore set forth. The lights were reported to them by the lookouts and the officer of the forecastle.

Neither the captain nor the officer of the deck at any time between the report of the lights and the collision looked to starboard.

IX.

If the schooner had held her compass course southwest, one-half south, and *Vandalia* had held her course, the collision would not have occurred. The schooner's second course (under first change of helm), about southwest by south, was taking her farther from the steamship's course and did not embarrass *Vandalia*. Her third course (under second change of helm), that is, under her first luff, would have taken her across steamship's course, but this course was held by the schooner but an instant.

Putting the helm up (starboard) was an order which when made was in the direction of safety. The last order on the schooner of hard down at the time when made was dictated by good judgment.

X.

The testimony as to time, except as to the moment of collision, which is fixed, is very uncertain, as it is largely a matter of estimate made under exciting circumstances. After carefully examining all the statements the court reaches the conclusion that the periods may be fixed approximately, as follows:

Chester's green and red lights were sighted ahead on *Vandalia* about three minutes before collision, possibly a trifle more; at this moment *Vandalia* was first put under

port helm. *Chester's* red and green lights were sighted to starboard of *Vandalia* not far from a minute, possibly a few seconds more, before collision.

Chester's green light was sighted under port bow of *Vandalia* some thirty seconds before collision, possibly a few seconds more.

XI.

As a result of this collision the *Chester* was dismasted and injured; she was subsequently towed by the *Vandalia* to the Delaware breakwater, whence she was towed by a tug to Philadelphia, where she was repaired.

XII.

The actual loss of freight on the *Chester's* voyage was \$225. The amount of charges and repairs rendered necessary by the collision was \$5,526.75.

The schooner after arrival in Philadelphia was necessarily detained ninety-five days engaged in making said repairs. Her capacity tonnage is 625 tons; fair demurrage would be \$50 per day.

The voyage to Washington, including time allowed for unloading and loading, would have been about twenty-four days; that is, fourteen days for the voyage, six days allowed consignee to unload before paying demurrage, three days free allowed to load, and twenty-four hours free after arrival.

During this period vessel would have retained, fed, and paid her entire crew. At Philadelphia five men were discharged, their total wages was \$3 per diem, the total cost of their food was \$1.66 per diem.

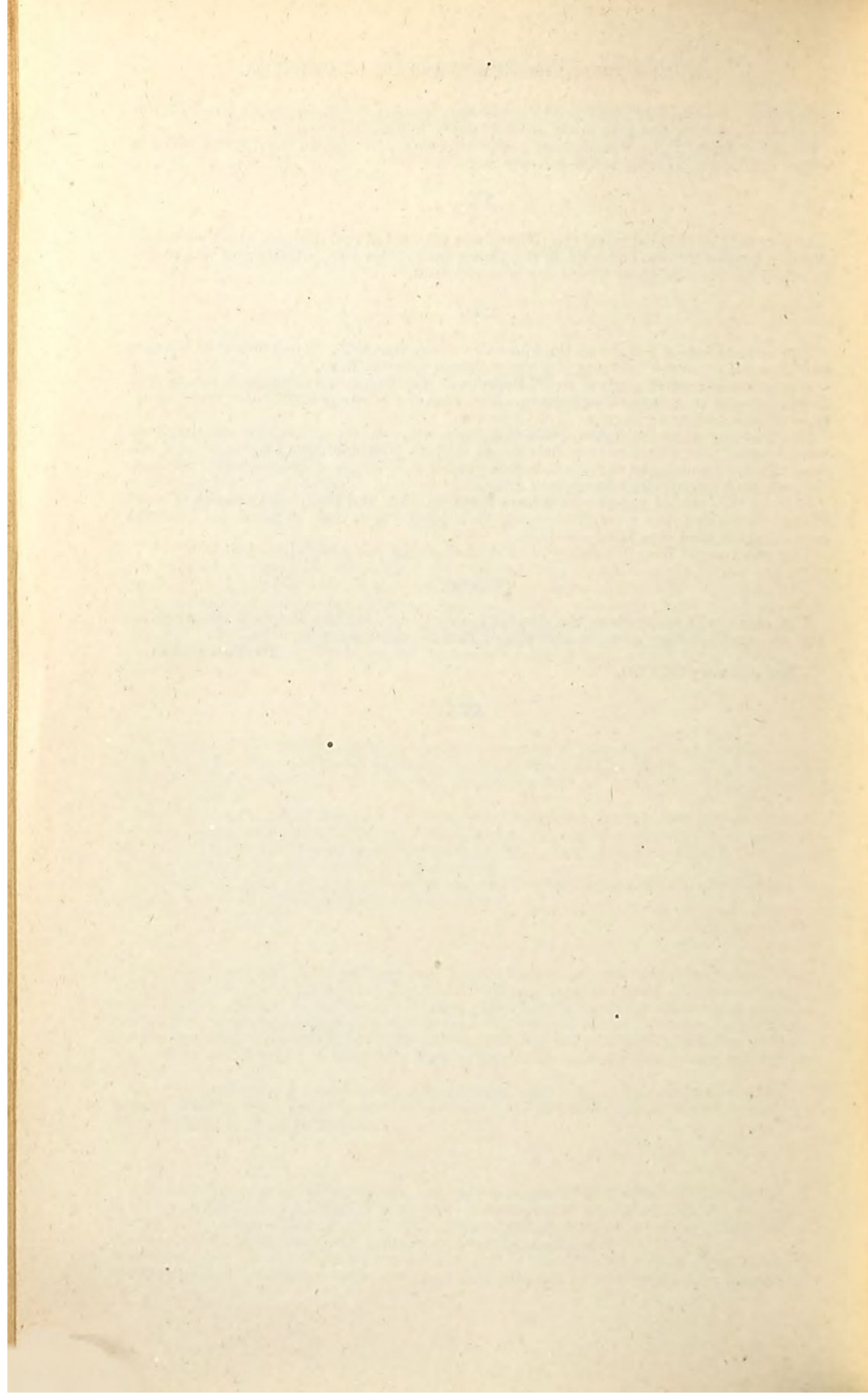
The net freight from Washington to Boston would have been about \$1,300.

ORDER.

The clerk will transmit to the Committee on Claims of the House of Representatives a certified copy of these findings of fact for their consideration.

BY THE COURT.

Filed January 28, 1889.



JOSEPH AND ELIZA REDFERN.

JUNE 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. REYBURN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 1716.]

The Committee on Claims, to which the above-entitled claim was referred, beg leave to report as follows:

Your committee have carefully considered said claim and find that the same is based upon certain contracts of lease between the appropriate officers of the War Department and the claimants, Joseph Redfern and Eliza J. Redfern, his wife. Though the said leases are made with the said Joseph Redfern alone, the said Eliza J. Redfern was interested in said property, and the claim is properly made in their joint names.

Said leases secured to the United States the privilege of placing the Chief Signal Officer of the Army in possession of houses Nos. 1719 and 1721 G street NW., in the city of Washington, in the District of Columbia, and to make such changes and alterations therein as would adapt such houses to the use of the Signal Office in the execution of the laws of the United States imposed upon the Chief Signal Officer of the Army.

Each of said leases contained the provision following, to wit:

X. It is further agreed, that on the completion of this lease, the restoration of the premises to their former condition is to be made before delivery of the premises to the party of the second part, and the rent to be continued and paid up to said delivery and completion of said restoration, provided that the election of the party of the second part to the above effect shall be given in writing within ten (10) days after the receipt by him of the notice of the termination of the occupancy hereinbefore provided for.

Your committee finds from the documentary evidence on file in support of said claim that the said election provided for in said Article X was duly made.

During the occupancy of said Signal Office of said premises under said leases many considerable changes and alterations were made of said houses, destroying their value for residence and ordinary business purposes, and thereby entailing upon the Government of the United States, by the terms of said leases, the obligation to "restore such premises to their former condition."

The question of restoration was fully and exhaustively considered by the appropriate departmental officers of the United States, and the cost of such restoration ascertained and stated, as will fully appear

from the following document, found on page 9 of Ex. Doc. No. 210, Fifty-first Congress, first session, to wit:

WAR DEPARTMENT, QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., June 13, 1889.

SIR: I have the honor to return the papers relating to the claims of Joseph and Eliza J. Redfern for rent of and damages to buildings Nos. 1719 and 1721 G street, Washington, D. C., used by the Signal Service of the Army, stated as follows:

For repairs	\$2,550.50
For rent from August 31 to December 31, 1888, at \$158.33½ per month....	633.33½
Total.....	3,183.83½

In the absence of any lease under which these buildings were occupied after June 30, 1886, it is difficult for the Quartermaster-General to determine the exact liability of the United States for injuries sustained by them.

I recommend that the sum of \$2,738.40 be allowed in settlement of this claim and it be paid out of any funds that may be available.

This sum is determined as follows:

Amount of repairs claimed	\$2,550.50
Estimated by Lieut. Col. Dandy	2,292.96
Mean	2,421.73
Add one-half of the four months' rent claimed in which to make repairs..	316.67
Total.....	2,738.40

This sum to be in full of all demands against the United States for injuries to and rent of these buildings during the period from November 1, 1871, to December 31, 1888.

Very respectfully,

S. B. HOLABIRD,
Quartermaster-General, U. S. Army.

The SECRETARY OF WAR.

[First indorsement.]

WAR DEPARTMENT, June 15, 1889.

Approved as recommended, and the Quartermaster-General will settle this case in the manner proposed by him.

J. M. SCHOFIELD,
Major-General, Acting Secretary of War.

[Second indorsement,]

QUARTERMASTER-GENERAL'S OFFICE, June 17, 1889.

The inclosed claim of Joseph and Eliza J. Redfern for rent and repairs to buildings Nos. 1719 and 1721 G street, Washington, D. C., used by the Signal Service of the Army, is herewith respectfully transmitted to the First Auditor of the Treasury Department for settlement, in the sum of \$2,738.40, as herein recommended by the Quartermaster-General and approved by the Secretary of War, from the appropriation for rent of buildings for use of the War Department, "Act making appropriations for the legislative, executive, and judicial expenses of the Government, fiscal year ending June 30, 1889," approved July 11, 1888.

S. B. HOLABIRD,
Quartermaster-General, U. S. Army.

Your committee is satisfied, and thereupon report, that there is due and owing from the United States to the said Joseph Redfern and Eliza J. Redfern, in respect to said claim, the sum so stated by the said departmental officers of the United States, to wit, \$2,738.40, such "sum to be in full of all demands for injuries to and rent of houses Nos. 1719 and 1721 G street NW., in the city of Washington in the District of Columbia," and recommend that a bill be reported to the House of Representatives providing for the payment of such sum.

JOHN L. YOUNG.

JUNE 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 6161.]

The Committee on Claims, to whom was referred the bill (H. R. 6161) for the relief of John L. Young, find the following to be the facts:

Said Young, as president of the Spartansburg and Union Railroad Company, had contracted to carry the mail on route 5,698, from Alston to Spartansburg, S. C., during the year 1861. On the 28th day of May, 1861, the following letter was received by him:

UNITED STATES POST-OFFICE DEPARTMENT, CENTRAL OFFICE,
Washington, May 28, 1861.

SIR: The Postmaster-General orders that the mail service on route No. 5698 from Alston to Spartansburg be discontinued from and after May 31, 1861, till the same can be safely restored.

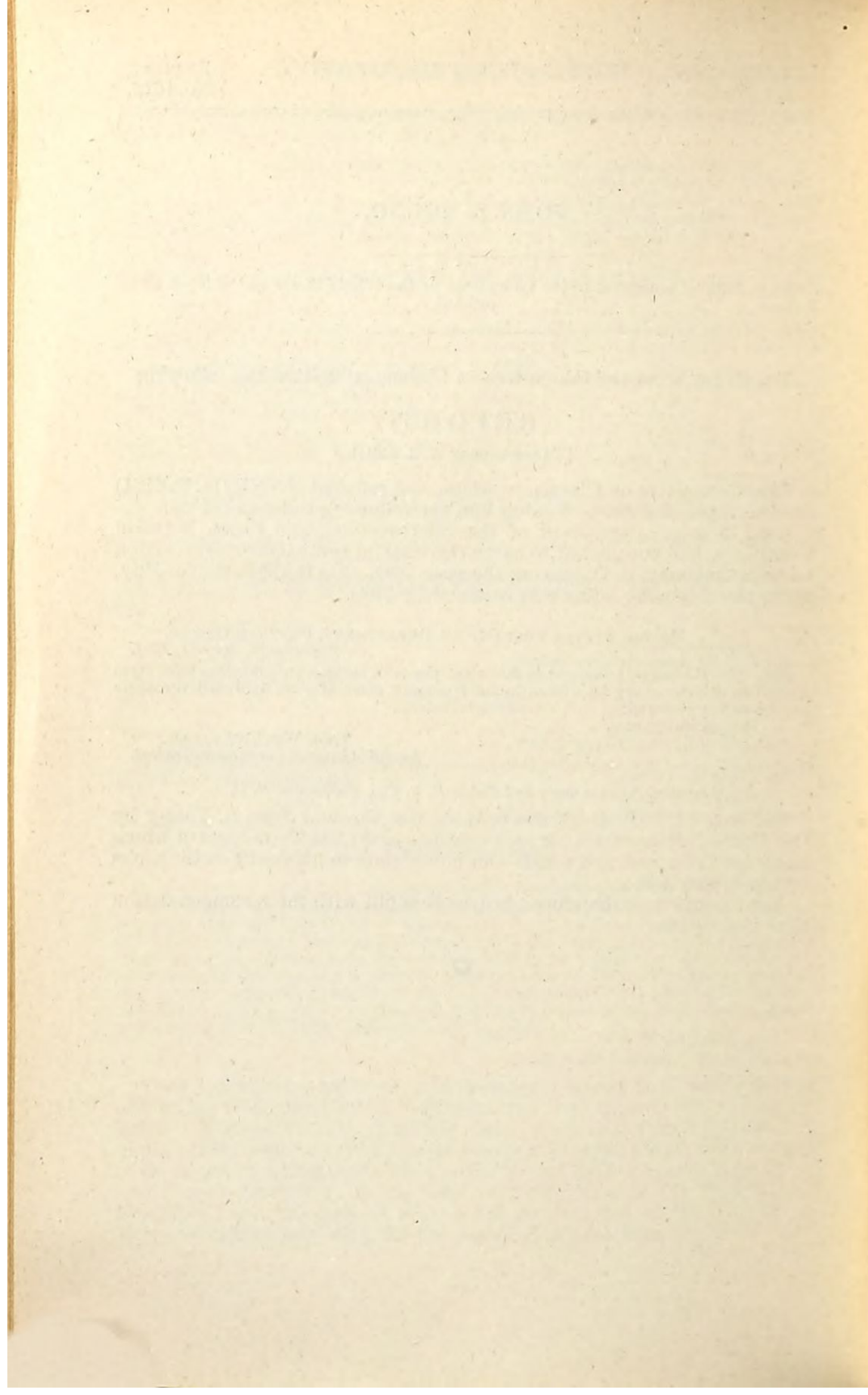
Respectfully, etc.,

GEO. WM. MCLELLAN,
Second Assistant Postmaster-General.

Mr. JOHN L. YOUNG,
President Spartansburg and Union R. R. Co., Unionville, S. C.

On May 31, 1861, there was balance due the said John L. Young by the United States upon his said contract of \$1,984.98, no part of which has ever been paid, and which sum now stands to his credit on the books of the Department.

Your committee therefore returns this bill with the recommendation that it do pass.



HERMAN REINER AND HERMAN REINER, JR.

JUNE 9, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 8985.]

The Committee on Claims, to whom was referred the bill (H. R. 8985) to refund certain internal-revenue taxes to Herman Reiner and Herman Reiner, jr., submitted the following report:

That they have carefully considered the same and find the following facts upon which claimants base their claim:

The claimants are distillers and rectifiers residing and doing business in the city of Brooklyn, State of New York. That on the 27th day of September, 1881, they purchased from Oscar Trust, distiller, at Peoria, Ill., 75 barrels high wines, containing 4,728 gallons, on which the taxes were paid at 90 cents per gallon, or \$4,255.20, which was paid as a part of the purchase price of said high wines. That said high wines were shipped in due course of freight to the petitioners at Brooklyn, N. Y. That on the 1st day of October, 1881, while being thus shipped they were destroyed by fire—the 75 barrels, the high wines, with stamps properly affixed and canceled—were entirely consumed, and the claimants base their claim upon section 3426, Revised Statutes, which reads as follows:

The Commissioner of Internal Revenue may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps issued upon the provisions of this title, or of any internal-revenue act, as may have been spoiled, destroyed, or rendered unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or when the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected: *Provided*, That nothing shall be held as authorizing redemption of or allowance for any of the stamps allowance for which is prohibited by the provisions of an act relative to the redemption of unused stamps, approved July twelfth, eighteen hundred and seventy-six, if presented within three years after the purchase of such stamps from the Government.

The committee are of the opinion that this act refers to the destruction or improper cancellation or use of stamps, and not to cases where the stamps are properly used and canceled; because in that case they lose their value, and by operation of law become merged into the value of the goods, and thus enhance the value of the goods themselves, and to hold the Government responsible for the value of stamps on goods properly stamped when the goods are destroyed by fire or otherwise would be to make the Government an insurer of the goods on which a duty was paid to the extent of the duty so paid.

The same reason would be true as to any property upon which either revenue or tariff duty had been paid, and if this claim be allowed it would upon the same reasoning follow the property in the hands of any person who owed them. This would open a new avenue to the

Treasury not contemplated by the framers of the act hereinbefore quoted.

The committee therefore recommend that this bill do not pass.

Your committee append as a part of this report the following letter:

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 4, 1892.

SIR: I am in receipt of your letter of the 1st instant asking for all of the information in possession of this office bearing upon the matter involved in H. R. bill 8985, to refund certain taxes to Herman Reiner and Herman Reiner, jr.

In reply I have the honor to state that on November 16, 1888, a claim of "Herman Reiners, surviving partner of the firm of H. & H. Reiners, late of Brooklyn, N. Y.," for the refunding of \$4,255.20 on account of spirit stamps destroyed by fire, was received at this office.

The facts in the case were set forth in the claim as follows: That "deponent was the purchaser and owner of 75 barrels of high wines produced by Oscar Furst, a distiller at Peoria, Ill., containing 4,278 gallons (proof), and paid for the stamps thereon placed. The said goods were on that day, September 27, 1881, duly delivered and duly stamped, as provided by law, to the Empire Line for transit to deponent's place of business aforesaid, and the said goods were placed on Empire Line car, No. 3435, and while said goods were in transit on the said car by and on the Indianapolis and St. Louis Railroad Company, of which train Wm. F. Brown was conductor, train No. 18, Ex. from Mattoon to Indianapolis, and on the morning of October 1, 1881, at 8 o'clock, when near Paris on said road, said car, with others, was totally wrecked by collision with another train and its contents entirely destroyed by fire together with a large number of other cars, and said stamps were burned up with the said 75 packages as aforesaid; that said goods were inspected by T. W. Moore, United States gauger, September 27, 1881, at Peoria, whose certificate is attached. That the numbers of said tax-paid stamps were 689078 and 689152, serial Nos. 5726521 to 595, net wine gallons, 3,126½, and proof gallons, 4,764.43; that deponent can not produce said stamps because of their total destruction along with said goods."

The collector's certificate as to the purchase of the stamps for the spirits in question shows that they were purchased on September 27, 1881, by Oscar Furst, the distiller referred to in the claim.

You will observe that the claim was filed by Herman Reiners (not Reiner) as surviving partner of H. & H. Reiners.

The claim was rejected because of being barred by statute. A substantial reason for its rejection other than the fact that it was barred, was that there was no law authorizing the refunding of the tax. The spirits had been withdrawn from the warehouse, the tax-paid stamps attached and canceled. The owner had taken possession of them. The stamps had protected the spirits until in transit on railroad car to claimant's place of business and the Government can not well enter into any arrangement with taxpayers by which it may agree to refund taxes on spirits destroyed after they leave the warehouse. Such practice would open the door to fraud. There could be no way to tell what spirits were in fact destroyed.

Had the claim, however, not been barred, and had there been a provision of law under which any allowance could be made for stamps in such a case, it is doubtful whether such allowance could have been made to any person other than the purchaser of the stamps from the Government, viz: Oscar Furst, the distiller.

Referring to this application of Mr. Reiner for relief, I would state that cases are constantly arising out of the numerous fires occurring in the country where parties who have sustained heavy losses by reason of the destruction of internal-revenue stamps upon uninsured or partially insured goods destroyed, appeal to this office for reimbursement and are informed that there is no provision of law for relief in such cases.

I would also state that in my opinion the facts presented in Mr. Reiner's case show no good reason why an exception should be made in his behalf and a refund of taxes made to him for which there is no provision of law available for the relief of the many others who suffer like losses.

Respectfully, yours,

JOHN W. MASON,
Commissioner.

Hon. B. H. BUNN,
Chairman Committee on Claims, House of Representatives.

WILLIAM C. TARKINGTON.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany S. 2592.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 2592) granting an increase of pension to William C. Tarkington, of Clarion County, Ind., have had the same under consideration and submit the following report:

Having carefully considered the evidence as set forth in the Senate report we adopt the same, as follows:

The petitioner was appointed quartermaster and commissary of subsistence with the rank of captain by President Lincoln in August, 1861, and he remained in actual service upon the staff or under the orders of the various generals commanding during the war of the rebellion, as appears from his military record on file. Among these are Generals Reynolds, Rosecrans, Banks, McClellan, and others.

The petitioner is now a pensioner of the United States at the rate of \$20 per month, for disabilities incurred in the service. This is granted on account of "chronic diarrhea and resulting piles, ulcer of the rectum, and stricture." The petitioner shows that he is also suffering from severe catarrh and bronchitis, which he claims to have incurred in the service from exposure while in camp and upon the march. He has filed an application for increase in the Pension Bureau, but the same has not been allowed by reason of want of technical proof that these disabilities had their origin in the service.

Your committee are of the opinion from the testimony on file, and especially from the statements of physicians included in it, that this catarrh and bronchitis did both originate from causes occurring during the military service of the petitioner; and we think also, from the statements of his friends, and his two physicians, Drs. Cline and Maxwell, that these two disabilities very much unfit him for any labor, and that they have become chronic and incurable.

The petitioner is 75 years old; he has no means of support except his pension.

Your committee, therefore, report the accompanying bill, increasing his pension to \$30 per month, and recommend its passage.

The medical evidence referred to in the foregoing Senate report is as follows:

Dr. Allison Maxwell, of Indianapolis, a physician of fourteen years' practice, testifies at the time of filing the claim for increase as follows:

I have examined Mr. W. C. Tarkington and have prescribed for him from time to time and know that he has suffered from chronic diarrhea contracted in the Army and that he is physically unable to perform any manual labor by reason of the diarrhea and its concomitant symptoms. My opinion is that he has no other disease which separately or in conjunction with the bowel trouble causes this weakness.

Dr. C. N. Metcalf, of Indianapolis, a practicing physician of seven-teen years' standing, testifies as follows:

I have been personally acquainted with Capt. W. C. Tarkington for several years and have frequently noticed his debilitated physical condition. I have examined him and found him suffering with chronic diarrhea, contracted in the Army; also find

that he is physically unable to perform manual labor, the result of diarrhea and its accompanying symptoms. It is my opinion that he has no other trouble aside from the bowel difficulty which causes his weakness and debility.

The claimant is over 75 years old and very feeble. His disabilities are constantly growing worse and, as appears from the evidence, he is totally incapacitated for the performance of any kind of manual labor.

The committee, therefore, believing this to be a meritorious case, submit a favorable report and recommend the passage of the bill.

O

MARY E. LAW.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany S. 2018.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 2018) granting a pension to Mary E. Law, submit the following report:

The claimant, as is shown by the papers and documents on file with this committee, is the widow of Capt. Richard L. Law, late an officer in the U. S. Navy. The bill under consideration was passed by the Senate, April 13, 1892. It appears from the service record that he was appointed a midshipman February 17, 1841; that he was commissioned by warrant as such on April 4, 1844; that he was promoted to passed midshipman on the 10th of August, 1847; that he was detailed as acting master and served as such on the U. S. S. *Hetzel* November 15, 1851; that he was commissioned by warrant as master March 3, 1855. He was appointed a lieutenant in the Navy October 17, 1855.

August 5, 1862, he was promoted lieutenant-commander; June 17, 1878, he was commissioned a captain in the Navy; on July 31, 1878, he was appointed chief of the Bureau of Yards and Docks, and served as such until June 30, 1881; October 18, 1885, he was appointed to the commander of the navy-yard, League Island; on December 9, 1886, he was placed on the retired list. He died at Washington, D. C., on the 8th of June, 1891. He served during the whole period of the civil war with the exception of two months, January and February, 1864, when he was off duty, being in actual service forty-five years. His service was one of efficiency and fidelity long continued and uninterrupted except for the brief time above stated. He died leaving surviving him the claimant, his widow, two daughters, and a son, who reside with her and are largely dependent upon her for support. He left an insurance of \$8,000, a considerable portion of which was exhausted in paying expenses of last sickness and funeral expenses.

She owns a third interest in 30 acres of land near Terre Haute, Ind., totally nonproductive, not only yielding no income but a burden in the way of taxes. The remainder of the life insurance has been invested at perhaps 6 per cent interest. It is safe, therefore, to say that, after deducting taxes on her unproductive land, Mrs. Law is in receipt of an income for herself of less than \$200 per annum, and last year had none whatever.

The claimant made application for pension on July 18, 1891, alleging that the soldier experienced in 1860 an attack of laryngeal trouble, which prevented the use of his voice for about six weeks, and from the effects of which he died as stated above stated. P. M. Rixey, surgeon

U. S. Navy, states that he first examined the patient in February, 1891, and discovered the growth about the size of a small filbert lying above and in the larynx. He found the glands of the neck all enlarged. The growth steadily increased in size until about 27th of May, when it became necessary to perform laryngotomy. The operation made respiration easier, but the difficult deglutition continued until his death. He also states that the use of his voice at sea would predispose to laryngeal trouble.

In a letter filed with the committee, dated Washington City, June 7, 1892, Dr. P. M. Rixey, jr., surgeon U. S. Navy, and directed to Senator D. W. Voorhees, he states:

In response to your request I have to state in the case of Commodore Law as follows: For nearly ten years preceding his death I was well acquainted with him, and for the past four years preceding his death attended him professionally. From having a husky voice and a constant tendency to clear his throat, I do not doubt that a chronic congestion and thickening of the lining membrane of the larynx existed for many years prior to his coming under my care, and that it is more than probable that they were due to use of voice at sea in all kinds of weather. Such a condition of the larynx would predispose to the disease of which he died. The commodore stated to me that after a severe test of the voice in a gale at sea, whilst in command, he lost his voice for several days, and for weeks was unable to speak above a whisper.

The widow's claim for pension was rejected by the Pension Bureau because of inability to prove that the officer's death was due to the service of the United States and line of duty. From the statement made in the above letter of Dr. Rixey, and from the oral statements made to this committee by Senator Voorhees and by one of the claimant's daughters, your committee believe that the last sickness of the deceased was incurred during his long service, and think the claimant should receive a pension payable out of the naval pension fund created and continued under various acts of Congress commencing as far back as November 25, 1775, and arising, not from taxation, but from prize money and other sources.

Your committee can not, however, agree to the amount of pension specified in the bill under consideration, as we know of no sufficient reason for allowing a sum so far beyond the amount to which widows are entitled, and therefore recommend that the bill be amended by striking out the word "fifty" and inserting in lieu thereof the word "thirty," so as to make the pension \$30 dollars per month.

Your committee further recommend that the bill be amended by adding at the close thereof the words "payable out of the Naval pension fund," and as thus amended, we recommend that the bill do pass.

LOUIS BADGER.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 6302.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6302) to increase the pension of Louis Badger, have had the same under consideration, and submit the following report:

The claimant served as a member of Company D, Fourth Indiana Cavalry, from December 14, 1863, to July 28, 1865, when he was discharged upon a surgeon's certificate of disability by reason of a gunshot wound of left thigh received in battle. He filed application for pension under general law and his claim was allowed May 21, 1865, at \$6 per month from July 28, 1865, on account of the gunshot wound, and the same was increased to \$8 from September 16, 1874; \$10 from November 9, 1877; \$14 from November 14, 1881, and \$16 from June 11, 1884, and he is now drawing a pension at that rate. He filed application for increase February 1, 1890, which was rejected December 17, 1890, on the ground that a \$16 rating was fully commensurate to the degree of his disability, and that sciatic rheumatism was not shown to be a result of wound of thigh.

The medical examination shows that he is rated in medical certificate dated June, 1890, at sixteen-eighteenths for gunshot wound of left thigh, and no rating for alleged sciatic rheumatism.

Cadwallader Jones, M. D., secretary of the board of examiners at Charlestown, Ind., made an examination of the claimant August 8, 1891, and in an affidavit filed with the committee, testifies as follows:

Gunshot wound of left thigh. Ball entered the body of the vastus-externus muscle $2\frac{1}{2}$ inches below hip joint, passing through the thigh, making its exit through the body of the vastus-externus muscle and fracturing the femur $2\frac{1}{2}$ inches below the thigh joint. There is a shortening of the left femur of $1\frac{1}{2}$ inches and an atrophy of the muscles in the region of the wound. Measurement left thigh $2\frac{1}{2}$ inches below the joint, 22 inches; right thigh, 23 inches. There is a great weakening of the muscles of the left thigh. Claimant is a farmer by occupation, and is not able to perform any manual labor that requires any considerable degree of walking, on account of the condition of his left leg, resulting from said gunshot wound. He has also rheumatism of the left hip, and kneejoint, and left shoulder. These points are all tender to pressure. There is a grating on motion of the left shoulder and hip joints. Motion is limited to one-fourth degree in left shoulder and hip joints. Said affiant says that considering the physical condition of said Badger, resulting from said gunshot wound while in the military service, a rating by the Pension Department of \$16 per month is entirely too low, and that \$50 per month would not be an overrating in his case.

W. G. Leinville, a regular practicing physician, who has been the family physician of claimant for three years and a half, testifies that he has often treated him for repeated attacks of rheumatism of the left hip joint and left kneejoint; he is often confined to his room and causing the use of crutches to enable him to get his meals. On account of his disabilities, resulting from said gunshot wound and rheumatism, is almost entirely unfitted to follow his vocation as a farmer. Any labor requiring any amount of walking he is unable to perform. His suffering is great at times and he is likely to so continue to suffer on through his life. His left leg is much shorter than his right leg as the result of said gunshot wound.

A large number of citizens and neighbors of the claimant, petitioning for an increase of his pension, testify substantially to the facts stated in the foregoing affidavits.

The soldier having been free from rheumatism at enlistment, and the rheumatism being located in the wounded limb and same side, it seems to your committee that the irresistible presumption is that the rheumatism is largely if not solely caused by the wound.

The committee recommend that the words "seventy-two," in lines 5 and 6, be stricken out and the word "thirty" inserted, so that it will read "at the rate of thirty dollars per month," and when so amended recommend the passage of the bill.



ANNA TORRENCE.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MARTIN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 4946.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4946) to grant a pension to Anna Torrence, have had the same under consideration and submit the following report:

The claimant was the widow of Elijah Groves who died in hospital at Memphis, Tenn., November 12, 1863. Her widow's claim was allowed June 2, 1864, at \$8 per month, to December 6, 1876, when claimant remarried to William Torrence, when her pension ceased. William Torrence died about four years ago leaving claimant in destitute circumstances.

Thomas Thrasher and J. W. Roberts testify that claimant has no income and is dependent on her labor for support. She owns a small house in Roanoke, Ind., which is worth about \$300. She has no other property or income and is old and in poor health. She is a worthy woman.

J. B. Bryson testifies that he is well acquainted with claimant. She is 69 years old, is poor, has no income, and no property but a small house and lot worth probably \$300, and is unable to work but little.

It is shown that she has not remarried since the death of her late husband, William Torrence.

ARTICLE

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.
1917

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JOANNA JUDD.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to
to be printed.

Mr. BUTLER, from the Committee on Invalid Pensions, submitted the
following

REPORT:

[To accompany H. R. 4448.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4448) granting a pension to Joanna Judd, submit the following report:

The claimant is the widow of Peter Judd, who enlisted September 20, 1864, and who died April 9, 1865, while in the pursuit of Lee's army, before its surrender at Appomattox.

The widow made application two months afterwards, being left with four small children and no means of support other than her manual labor, but her application was rejected on the ground that the death of the soldier was due to the effects of a quantity of applejack whisky, which he had drunk during the day.

From an examination of the evidence on file with the claim the following facts are disclosed: The day upon which he died was a very hot one. The Army was upon a forced march, and very poorly supplied with food; and at a place known as New Store a quantity of applejack was found and the men of the command partook of it, some of them becoming intoxicated. The command marched several miles that afternoon and then went into camp for the night, the men lying upon the ground exhausted by the severe march of that and preceding days. They had been in camp but a short time when they were ordered to advance to a point 5 miles distant.

The men were aroused from their sleep, but Judd did not respond, and an investigation disclosed to his comrades that he was dead. The surgeon of the command made a hasty examination and reported him dead, the cause due to apoplexy, superinduced by the excessive use of intoxicants. A comrade returned to the place the next morning and buried the remains where he died in a field by the roadside; and this surgeon's report has been accepted as proof of cause of death, and that, under the circumstances, the application for pension was rejected. It is shown that previous to the time of the soldier's enlistment he was a man of good habits and a member of the Methodist Church. Neighbors testify that they never saw or knew of his drinking. Comrades testify that the day of his death was the only one that he was ever intoxicated while with the command, and the records of the War Department show him present all of the time with his command.

From all the evidence found with the files, your committee believe the soldier did drink that day, but that it was not the cause of death, but

that it is more than likely that death was due to fatigue, want of proper food and exhaustion, the report of the surgeon to the contrary notwithstanding; said report being but the result of a hasty examination made in the night, and by a person overworked by the arduous duties entailed by the constant marching and battles incident to the last days of the war in Virginia. The Pension Department could, under the circumstances, do nothing but reject the claim, but your committee, finding that the deceased was a good and faithful soldier, not used to intoxicating drinks, and that his death was not the result of vicious habits.

Special Examiner Geo. Anderson, who made a special examination, recommends the pension be granted, but his recommendation was not agreed to.

As before said, the widow was left with four small children, which she has managed to support and educate by her manual labor. She is now well advanced in years, dependent upon others for her support, and your committee, believing her claim a meritorious one, recommend the passage of the bill.



SEATON NORMAN.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. WISE, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT:

[To accompany H. R. 7957.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 7957) for the relief of Seaton Norman, have had the same under consideration and report it back without amendment and with the recommendation that the bill do pass.

Seaton Norman was an assistant surgeon in the United States Marine-Hospital Service, and "in a particularly difficult examination" for promotion "was within a fraction of making the required grade" (the required grade being 80 and he obtaining 79.26). Under these circumstances, the Assistant Secretary of the Treasury, on January 14, 1890, addressed him a letter asking for his resignation as assistant surgeon in the service already named, and he, as it seems, under a misconception of the regulations governing the service, and believing that the letter of the Assistant Secretary was compulsory upon him, did actually resign.

It also appears that there is no law justifying the compelling of an officer of this medical service to resign under a threat of dismissal for failure to pass an examination looking to promotion; and it is well argued that a failure to pass an examination is sufficiently punished by failure of promotion, the loss of numbers, and the promotion of junior officers.

It is also shown that "this officer's record as attested by the medical officers under whom he had served was very satisfactory;" and it is believed that "his return to the service would meet with general approval," as the fair thing to be done.

Your committee do not hesitate to believe that a peculiar hardship was put upon a worthy man and a good officer in this case by the unauthorized practical compulsion to resign, and that Congress can do no less than attempt to restore him to the position from which he was dislodged, and they subjoin hereto the correspondence in the case, showing that the Supervising Surgeon-General in the Marine-Hospital Service and the board of medical officers who examined Dr. Norman go very much further than a mere concurrence in the passage of this bill.

TREASURY DEPARTMENT,
OFFICE OF THE SUPERVISING SURGEON-GENERAL, MARINE-HOSPITAL SERVICE,
Washington, D. C., May 16, 1892.

SIR: I have the honor to acknowledge the receipt, by reference, of a communication from the clerk of the Committee on Interstate and Foreign Commerce, inclosing for consideration bill H. R. 7957, with request for suggestions touching the merits of the bill and propriety of its passage.

In reply I beg leave to state that a copy of the bill and of the committee's letter has been forwarded to each member of the board of surgeons who examined Dr. Seaton Norman for his promotion.

Inclosed are certified copies of the replies received from each member of the board.

I inclose also a copy of the letter of the Assistant Secretary of the Treasury, dated January 14, 1890, addressed to Assistant Surgeon Norman, informing him that his resignation would be recommend for acceptance, if tendered, to take effect February 28, 1890. Subsequently, this was changed to take effect at the end of four months, and he was granted leave of absence during this period.

In view of the expressions of opinion from the three surgeons who examined Dr. Norman, and his good official record, I have to express a favorable opinion with regard to the passage of the bill.

The bill is also, herewith, returned.

Respectfully, yours,

WALTER WYMAN,
Supervising Surgeon-General, Marine-Hospital Service.

The SECRETARY OF THE TREASURY.

U. S. MARINE-HOSPITAL SERVICE, MIDDLE ATLANTIC DISTRICT,
Port of Philadelphia, Pa., Surgeon's Office, April 18, 1892.

SIR: Referring to inclosed papers in the case of Dr. Norman, I would respectfully state that in my opinion any comment or recommendation I may have to make in this case should be fully concurred in by the other members of that board before any action is taken. I would therefore respectfully recommend that said board confer together in the case and submit to you such report as they may deem just and proper.

Very respectfully, your obedient servant,

GEO. PURVIANCE,
Surgeon, Marine-Hospital Service.

The SURGEON-GENERAL, U. S. MARINE-HOSPITAL SERVICE,
Washington, D. C.

I certify that the above is a true copy.

GEORGE T. VAUGHAN,
Passed Assistant Surgeon, Marine-Hospital Service.

TREASURY DEPARTMENT,
OFFICE SUPERVISING SURGEON-GENERAL, MARINE-HOSPITAL SERVICE,
Washington, D. C., April 20, 1892.

Respectfully returned to Surg. Purviance with the reports of Surg. Godfrey and Irwin, for his information and any further remarks he may wish to make.

These papers to be returned.

WALTER WYMAN,
Supervising Surgeon-General, Marine-Hospital Service.

U. S. MARINE-HOSPITAL SERVICE, PORT OF PHILADELPHIA, PA.,
Surgeon's Office, April 21, 1891.

Respectfully returned to the Supervising Surgeon-General, Marine-Hospital Service, with the statement that I can cheerfully recommend that Dr. Norman be reinstated to his original rank provided it does not establish a precedent that will be an injury to the service or embarrass the future administration of the Surgeon-General, and it was to avoid the latter contingencies that I suggested that a board be convened for the purpose of carefully considering so important a question.

GEO. PURVIANCE,
Surgeon, Marine-Hospital Service.

U. S. MARINE-HOSPITAL SERVICE, NORTHERN ATLANTIC DISTRICT,
Port of Boston, Surgeon's Office, April 18, 1892.

SIR: I have the honor to return herewith the papers relating to the case of Dr. Seaton Norman, late assistant surgeon, Marine-Hospital Service, with the following remarks:

I believe that the bill for his reinstatement in the service, as appears in its text that Dr. Norman resigned his position under a misapprehension of his rights in the premises. There is no law so far as I am aware by which a medical officer of this service can be dismissed or compelled to resign under threat of dismissal for failure to pass an examination.

Moreover such a course would be unjust, because a failure to pass an examination is sufficiently punished by failure of promotion and the loss of numbers by promotion of junior officers.

A particular hardship in this case is the fact that Dr. Norman was within a fraction of making the required grade in a particularly difficult examination. This officer's record, as attested by the medical officers under whom he had served, was very satisfactory, and his return to the service would, I believe, meet with general approval.

Respectfully yours,

FAIRFAX IRWIN,
Surgeon Marine-Hospital Service.

The SURGEON-GENERAL, MARINE-HOSPITAL SERVICE,
Washington, D. C.

I certify that the above is a true copy.

GEORGE T. VAUGHAN,
Passed Assistant Surgeon, Marine-Hospital Service.

U. S. MARINE-HOSPITAL SERVICE, MIDDLE ATLANTIC DISTRICT,
Port of New York, N. Y., Surgeon's Office, April 15, 1892.

SIR: Referring to your communication of the 14th instant asking for such comments and recommendations in the case of Dr. Seaton Norman as I may see fit to make, I have the honor to reply: That I have been of the opinion that Dr. Norman left the service under misconstruction of the Regulations as referable to the examination of candidates for promotion, and I think it would be fair for him to be restored to his original rank.

Respectfully, yours,

JOHN GODFREY,
Surgeon, Marine-Hospital Service.

Dr. WALTER WYMAN,
*Supervising Surgeon-General, U. S. Marine-Hospital Service,
 Washington, D. C.*

I certify that the above is a true copy.

GEORGE T. VAUGHAN,
Passed Assistant Surgeon, Marine-Hospital Service.

TREASURY DEPARTMENT,
Washington, January 14, 1890.

SIR: You are advised that at the recent examination of candidates for promotion in this service you failed to reach the grade required by the Regulations. In view of the fact that you had previously failed to pass the required examination for promotion you are informed that your resignation as an assistant surgeon of this service will be recommended for acceptance, if tendered, to take effect February 28, 1890, and you will be granted a leave of absence for thirty days to that date.

The Supervising Surgeon-General informs me that he personally called your attention to your approaching examination last February, while at Evansville, and urged your renewed application to your professional studies, and it is a matter of personal regret to him that the warning should have been apparently so little heeded.

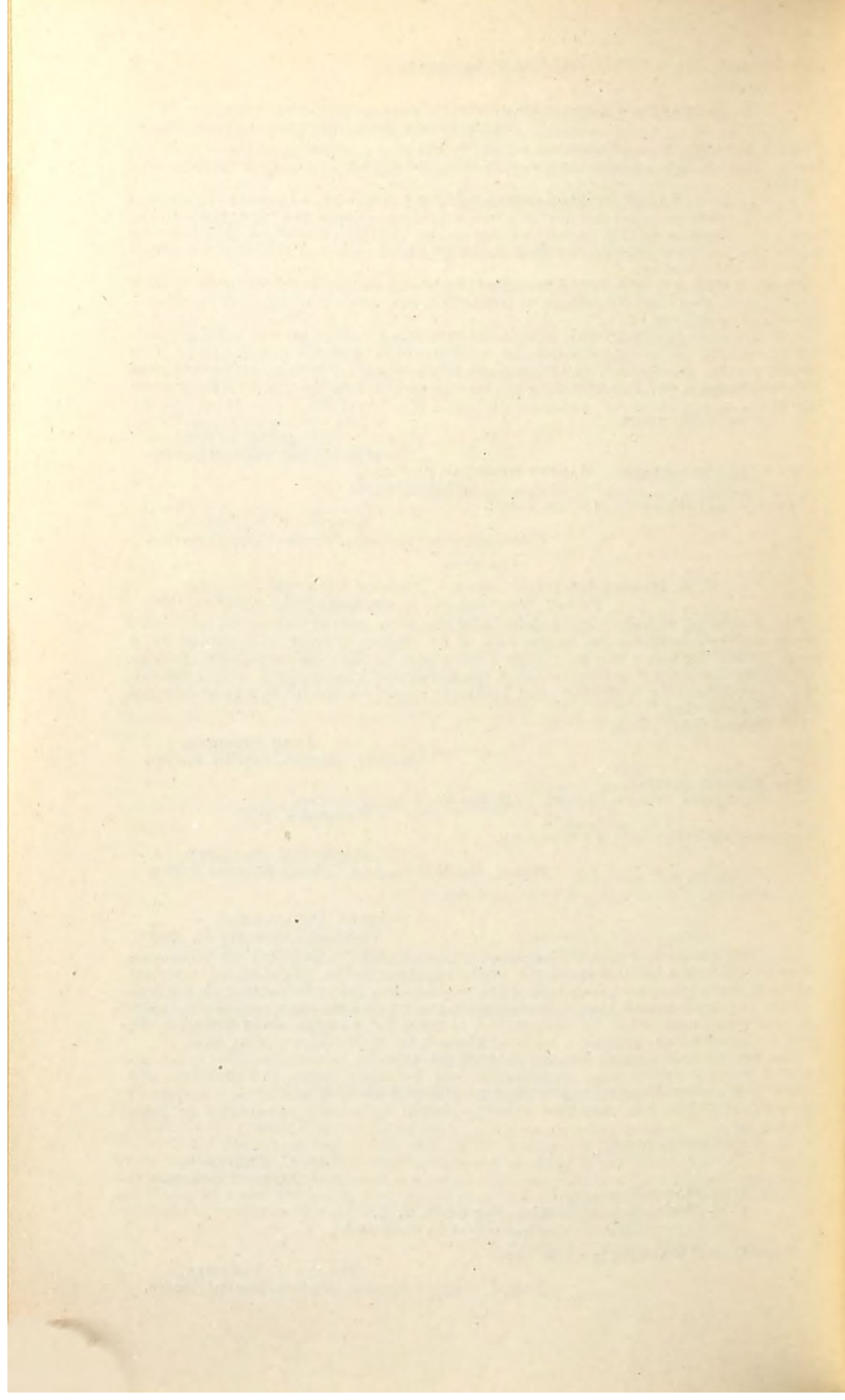
Respectfully, yours,

GEO. C. TICHENOR,
Assistant Secretary.

Asst. Surg. SEATON NORMAN,
*U. S. Marine-Hospital Service, New York, N. Y.
 (Through medical officer in command.)*

I certify that the above is a true copy.

GEORGE T. VAUGHAN,
Passed Assistant Surgeon, Marine-Hospital Service.



ELIZABETH L. FRITCHER.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. VAN HORN, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 7052.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 7052) granting a pension to Elizabeth L. Fritcher, formerly McQueen, submit the following report:

It is clearly shown by the records of the War Department and other evidence that the petitioner served as a hospital nurse at Baptist Church Hospital, Alexandria, Va., from July 9, 1862, to June 4, 1863, in the actual care of the sick and wounded.

It is also shown that she is now in poor health, suffering from blood poison alleged to have been contracted in the hospital; she is now and has been for seven years employed at manual labor in a knitting mill at Amsterdam, N. Y., to support herself and family; that she has no property yielding an income; that her husband is infirm, being 73 years of age, and unable to aid in the support of his family. These facts are shown by testimony of Alonzo H. De Graff and William J. Taylor, of Amsterdam, N. Y.

Your committee recommend that the bill do pass after being amended by striking out all the words after the word "month," in line 7, up to and including the word "serving," in line 8.

IDA A. TAYLOR.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CURTIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 9011.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 9011) granting a pension to Ida A. Taylor, submit the following report:

The petitioner is the daughter of Chester Taylor, who enlisted in Company G, Eighty-third New York Volunteers, July 14, 1863, and died in service and line of duty June 1, 1864. His widow was pensioned until November 7, 1866, when she married Marvin D. Smith. The daughter Ida was pensioned from that date to July 12, 1875, when she became sixteen years of age. She is now nearly 33 years of age, having been born July 13, 1859.

The petitioner is now a confirmed invalid and has been for many years.

Elbert A. Wood, of Winthrop, N. Y., testifies that the petitioner has been for about fifteen years confined to a dark room, not able to help herself from chair to bed, or sit at table for meals because of a spinal disease, pronounced by the physicians incurable; her mind is not greatly impaired, but she is extremely delicate and sensitive.

Caroline C. Church, of Winthrop, N. Y., testifies that the petitioner has been since she was 16 years of age not able to help herself from chair to bed, or sit at table for meals because of spinal disease, pronounced incurable, resulting in total disability, not able to bear light, and that her stepfather has cared for her as best he could from his limited income.

It is also shown that the stepfather's income from all sources except his manual labor does not exceed \$100 per year.

Your committee recommend that the bill be amended by striking out the word "invalid" in line 6, and inserting in lieu thereof the words "permanently helpless," and that as so amended the bill do pass.

WALTER BARRETT.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KRIBBS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 4815.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4815) granting a pension to Walter Barrett, submit the following report:

Walter Barrett, the claimant in this bill, was lieutenant-colonel of the Eighty-fourth Regiment Pennsylvania Volunteers, enlisting in 1861, and was mustered out of the service in September, 1862, on account of injuries received in the line of duty at Clouds Mill, Va., caused by his horse falling through a bridge and falling upon him, injuring him so severely as to incapacitate him for further service, and was the cause of his present disabilities.

His left arm was splintered and a bone in his left foot broken. He was crushed at the hips, and bowels and spine injured. He was pensioned by the Department at \$12.50 per month, which was increased to \$30 per month, when he broke down under the constantly increasing disability from his injuries. He applied in 1888 for an increase, and although recommended by the board of examiners for the first grade, or \$72 per month, it was refused. The facts as to his being a sound man when he enlisted, as to receiving his injuries as stated, and as to his disability since his discharge from the service are all entirely substantiated by the evidence of others, among which are many of his comrades, neighbors, ex-Governor Curtin, and others.

His last examination before the Pension examining board was August 25, 1889. The report, under the request of the Commissioner of Pensions, is thorough and exhaustive, and comprises, in addition to the regular blanks usually used by examining boards, three closely written legal-cap pages. From this lengthy report we give the following brief synopsis:

He is suffering from gastro intestinal catarrh, constipation of the bowels, torpidity of the liver, acidity of the stomach, muscles are weak, flabby, and wasting; has lost his physical strength; his mental vigor is very much impaired the last two or three years; slow of speech and ideas confused, so that he can not practice his profession as attorney at law; exceeding tenderness of the spinal column; can not walk any distance without crutches, in attempting it he has a staggering, straggling, and straddling gait, and in order to walk at all the forearms are brought to the position of an acute angle with the upper arms.

His arms are almost as helpless as his legs; partial paralysis of the bladder, great difficulty in voiding urine; soreness of the limbs and sense of weight and dragging; external and internal hemorrhoids, accompanied with constant pain. The external tumors are five or more, as large as walnuts; rectum highly inflamed and bleeding;

violent hemorrhages occur and prolapsus of the rectum when bowles move. Fistula in ano, which some times partially closes, suppurates, fills up, breaks, and discharges. Heart very irritable, and slight arterial tension at radial pulse. All the organs of the body partake of general weakness of his constitution.

He is suffering from the effects of progressive posterior spinal sclerosis, induced or originated, no doubt [says the report of the examiners], by the injury or concussion received by the fall of his horse while in the service; also that there is some change in the cord, either of induration, sclerosis, or some form of gray degeneration, is very evident from the symptoms manifested. There is partial or incomplete paralysis or paresis of the lower extremities. This man has the constant attention of his wife, otherwise he could not get along at all, and in our opinion [says the board] he is entitled to a rating of the first grade.

Subsequent to this examination there was placed on file an affidavit of Dr. D. Hayes Agnew, the eminent Philadelphia surgeon, saying that he has known Col. Bassett for twenty years, and had the active treatment of his case for several years, and that he treated him for paresis, resulting from an injury to the spine. The result of the disease being paralyzation of his extremities and an obstruction of vision.

Dr. J. P. Burchfield, who is a member of the pension examining board that made the examination hereinbefore quoted, certifies under date of June 6, 1892, that—

Col. Bassett is in much the same physical condition that he was at the time the board examined him. He has not improved any in health, and it is not likely he will, for his disease is one which is permanent in character, and in all probability will grow worse as he advances in years.

Isaac Johnson and W. A. Hagerty testify that they have known Col. Barrett for forty and twenty years' respectively, and in January, 1888, that he broke down and was confined to his room, and afterwards was taken to a hospital in Philadelphia for treatment, and since that time has needed and required regular aid and attention.

The claimant is poor and has no other means of support than his present pension, which is not sufficient to furnish him with the care and support that his present condition requires.

The Pension Department did not think the case was one that ought to receive the first grade rating of \$72 per month, recommended by the board of examiners.

While your committee does not feel justified in recommending this degree of rating, but believes that the applicant ought to have a better rating than the Department, under the law, could allow; that is, a rating intermediate between the \$30 and \$72 grade.

Your committee returns this bill with a favorable recommendation, that it do pass after being amended by striking out the words "seventy-two" in the fifth line, and inserting "fifty;" so that the amended bill shall read, "rate of fifty dollars per month."

LOUISA J. REEVES.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SNOW, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 8263.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 8263) to restore to the pension roll the name of Louisa J. Reeves, submit the following report:

Your committee have fully considered said case and find from the testimony that the claimant was the widow of Robert M. Horton, whom she married in June, 1857, and lived with him until September 8, 1863, at which time said Horton departed this life while engaged in war of the rebellion, and after his death the claimant received a pension from the Government as such widow until her second marriage to Thomas J. Reeves, which was on the 11th day of November, 1868, and the said Thomas J. Reeves departed this life July 24, 1886.

It further appears from the testimony that the said Thomas J. Reeves left no estate or property to his said wife; that she is now old and unable to perform any manual labor because of chronic rheumatism, and has no means of support nor friends or relatives who have sufficient means to support her.

These facts are shown in part by the records of the Pension Bureau, and in part by the testimony of Dr. I. W. Finks and Joshua M. Desart, of Hillsboro, Ill., on file with the committee.

Your committee therefore return the bill with the recommendation that it do pass.

IRA INGRAHAM.

JUNE 10, 1892.—Indefinitely postponed and ordered to be printed.

Mr. MCKINNEY, from the Committee on Invalid Pensions, submitted
the following

ADVERSE REPORT:

[To accompany S. 1540.]

The Committee on Invalid Pensions have considered the bill (S. 1540) which was passed by the Senate April 13, 1892, granting a pension to Ira Ingraham, and submit the following report:

The petitioner was a volunteer surgeon, employed in the hospital at Fort Monroe from May, 1864. It does not appear from the Senate report how long he served in this capacity. He was not mustered into the military service of the United States, but was a civilian employé, serving gratuitously. The case does not come within the rules fixed by this committee and acted upon generally by previous Congresses, to consider favorably bills to pension civilian employés only for wounds received in action at the hands of the enemy.

No such disability is claimed in this case, and your committee therefore recommend that further consideration of the bill be indefinitely postponed.

○

HERMAN HEINZE.

JUNE 10, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HARRIES, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany H. R. 6509.]

The Committee on Invalid Pensions have considered the bill (H. R. 6509) granting a pension to Herman Heinze and submit the following report:

The petitioner was a member of the Minnesota militia and was wounded in the left shoulder, August 23, 1862, in an engagement with the Sioux Indians at New Ulm, Minn., as fully appears from the evidence.

The adjutant-general of Minnesota certifies that Herman Heinze enlisted as a private in Company No. 1, Le Seuer Tigers, Minnesota Militia, commanded by Capt. William Dellaughter, on August 12, 1862, and was discharged August 27, 1862, and was in the battle of New Ulm, August 23, 1862. The fact that he was wounded by the enemy in the battle is shown by the testimony of William Dellaughter, who was captain of the company; John F. Meagher, who was first lieutenant of the company; Dr. W. R. McMahon, who treated him in the hospital for the wound, which was a fracture of the left acromion process; Dr. A. W. Daniels, who was in charge of the hospital, and of John Klein and Anton Phillips, comrades, who had personal knowledge of the wound being received.

Your committee recommend that the bill be amended by inserting after the word "laws," in line 5, the words "at a rate proportionate to the degree of his disability from gunshot wound of the left shoulder," and that as thus amended the bill do pass.

RESUBDIVISION OF SQUARE 673, WASHINGTON, D. C.

JUNE 10, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. RICHARDSON, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany S. R. 47.]

The Committee on the District of Columbia have considered Senate joint resolution 47, authorizing the resubdivision of square 673, in the city of Washington, and report same with recommendation that it do pass.

The committee find the facts in this matter set forth in the Senate Report No. 525, first session, present Congress, and hereto append same as a part of this report.

[Senate Report No. 525, Fifty-second Congress, first session.]

The Committee on the District of Columbia, to whom was referred the joint resolution (S. R. 47) authorizing the resubdivision of square 673, in the city of Washington, after having considered the measure, make a favorable report upon the same.

This square is bounded on the north by M street, south by L street, east by First street NE., and west by North Capitol street. Under the present subdivision of this square, a plat of which is herewith inclosed, three streets run through it east and west, which are only 40 feet wide. When this subdivision was made the ground had only a nominal value; now it has greatly increased in value, and should be subdivided so as to front on full-width streets. The resolution is in harmony with the act of Congress which provides that all future subdivisions shall conform to the plan of Washington, with full-width streets, etc. In a word, authority is asked to close up these streets, which are practically alleys, that other streets may be opened up having full width. There are no buildings on this square.

The resolution was referred to the District Commissioners, who made a favorable report upon it.

WASHINGTON AND GREAT FALLS ELECTRIC RAILWAY
COMPANY.

JUNE 10, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. HEARD, from the Committee on the District of Columbia, submitted
the following

REPORT:

[To accompany H. R. 9172.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 2656) to incorporate the Washington and Great Falls Electric Railway Company, have had the same under consideration and submit the following report to accompany the substitute herewith offered for said bill:

The bill provides for the construction of an electric railway from Georgetown to Cabin John Bridge, passing along the north side of and parallel to the conduit road.

This bill is essentially similar to a bill of the same title which received a favorable report from the committee at the last session of Congress (H. R. 13402 and report 3836, Fifty-first Congress, second session) after a very careful examination and consideration of its merits.

The present bill has been very carefully examined by the engineer in charge of the Washington aqueduct and by the Secretary of War, and numerous suggestions made by them, in which the committee concur.

The correspondence between the officers of the War Department and District Commissioners and the chairman of the Senate Committee on the District of Columbia with reference to the Senate bill of same title and the report of said committee are incorporated herein and made a part of this report.

Your committee adopts the language of Assistant Secretary Grant, that "undoubtedly such a road well built and well run would be a substantial benefit to the Government as well as to the public generally," and therefore recommend the passage of the accompanying substitute, which is the result of the numerous conferences with the various officers of the Government concerned in the matters connected therewith.

Senate Report No. 692, Fifty-second Congress, first session.

Mr. McMILLAN, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany S. 804.]

The Committee on the District of Columbia, to whom was referred the bill (S. 804) to incorporate the Washington and Great Falls Electric Railway Company, having considered the same, recommend favorable action on the bill as amended.

The bill provides for connecting the city of Georgetown with Cabin John Bridge by an electric railroad, to be operated by the trolley system. The railway is to run along the Conduit road, one of the most popular and most delightful drives out of Washington. The distance is about 7 miles. The bill also provides for a branch line to the Chain Bridge. The popularity of the route insures a large traffic from the time the railway shall be opened, and the franchise is the most valuable of all the franchises which Congress has been asked to grant during the present session.

The proposed incorporators of the road are mostly men who own lands adjacent to the line of the proposed railway, and should the line be constructed their property will be very considerably increased in value.

Again, the railway must of necessity cross Government lands pertaining to the reservoirs which supply Washington with water and must cross and run in proximity to the Conduit road, underneath which is the Washington aqueduct.

Therefore, while the committee recognizes the rights of the public to a means of enjoying the beautiful scenery along the Potomac, and of the land owners to access to their possessions, they also feel that no restriction which tends to protect the Conduit road as a part of the water system of Washington, or as a public drive, can safely be omitted from the charter. The result of the committee's recommendations, should they be adopted by the Senate, will be to provide for a very expensive railway to be built 50 feet at one side of the middle of the paved portion of the Conduit road, on land to be acquired by the company building the railway.

In order to protect the Canal road, a narrow thoroughfare leading out of Georgetown on the west, the committee has provided that cars shall be run on an elevated structure, to be securely built over the entire width of the road from the Aqueduct Bridge to the point where the railway leaves the road and goes upon the lands of the company.

As has been said, it is absolutely necessary for the railway to run across some portion of the Aqueduct lands, and the proposed charter gives such rights for a distance, altogether, of about 1 mile. In return for such privileges the company agrees to light the entire length of its line from dusk till 12:30 o'clock in the morning, or so long as its cars shall run.

The location and maintenance of the line while on Government land is made subject to the control of the Secretary of War, and otherwise to the Commissioners of the District of Columbia, who have reported favorably on the bill.

The bill, as reported from the committee, has been submitted to the Secretary of War, and is the result of so many conferences with the very careful and efficient officer in charge of the Washington Aqueduct that the bill has been twice reprinted before receiving the final amendments which now appear.

The Commissioners report and so much of the War Department reports as are now pertinent to the bill are appended. The reports of Lieut. Col. Elliot are explicit as to the details of the bill.

OFFICE OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, February 8, 1892.

SIR: The Commissioners have the honor to make the following response to your request for their views upon Senate bill 804, "To incorporate the Washington and Great Falls Electric Railway Company." The Commissioners are favorably impressed with the general project as a matter of public usefulness, but as the construction of a railroad under this bill would involve the use to a certain extent of the Conduit road, which is under the care of the War Department, the Commissioners suggest that the bill be referred to the Secretary of War for his consideration and opinion.

The bill should be amended by providing in the usual manner for the payment of a tax of 4 per cent on the gross receipts of the company in lieu of taxes on its personal property, and that "wherever more than one of the tracks of said railroad company shall be constructed on any of the public highways in the District of Columbia, the width of the space between the two tracks shall not exceed 4 feet."

Very respectfully,

J. W. DOUGLASS,

President of the Board of Commissioners, District of Columbia.

Senator JAMES McMILLAN,

Chairman Senate Committee on District of Columbia.

WAR DEPARTMENT,
Washington, March 4, 1892.

SIR: I return herewith Senate bill 804, Fifty-second Congress, first session, "To incorporate the Washington and Great Falls Electric Railway Company," which was referred to this Department on the 17th ultimo.

Whether the proposed road would injuriously affect the Conduit or the Government waterworks, is a subject upon which no opinion is here expressed. Reference is respectfully made to the report, herewith transmitted, of Lieut. Col. George H. Elliot, of the Engineer Corps, dated January 7, 1892, and communication from Gen. Casey, Chief of Engineers, dated February 20, 1892.

Undoubtedly such a road, well built and well run, would be of *substantial benefit to the Government, as well as to the public generally*. Should the charter be granted, it is respectfully suggested that the bill ought to be amended so as to secure beyond doubt or controversy the following stipulations:

(1) That the company shall erect, and maintain between nightfall and daylight, such electric lights as the Secretary of War may require, to be placed at such points along the proposed road as the Secretary of War may direct.

(2) That the grade of said electric road shall be made to correspond with the grade of the Conduit road, and that the company shall grade and maintain, under the

direction of the Government engineer in charge, the space between the inside track and the paved or macadamized part of the Conduit road, so that said space shall always be in suitable condition for public travel.

(3) That at the crossing of all ravines where there are culverts, the company shall extend the present culvert to the outside of their road and build it in all respects as substantial as the Government culverts are built, and to the satisfaction and acceptance of the Government engineer in charge, and so that there shall be no obstruction to the flow of water underneath, or to the travel across the culvert.

(4) That in the grading of said electric road all waste dirt shall be deposited along the line of the Conduit road as may be directed by the Government engineer in charge.

(5) That said company shall cross the Conduit road only three times, as specified, and if the crossing is made at grade the said company shall, if so required by the Secretary of War, maintain and operate a signal or flag for the protection of the travel on the Conduit road.

Very respectfully,

L. A. GRANT,
Assistant Secretary of War.

The CHAIRMAN OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
United States Senate.

OFFICE OF THE CHIEF OF ENGINEERS, UNITED STATES ARMY,
Washington, D. C., February 20, 1892.

SIR: I have the honor to return herewith the communication of the Senate Committee on the District of Columbia, February 17, 1892, transmitting S. 804, Fifty-second Congress, first session, a bill "To incorporate the Washington and Great Falls Electric Railway Company," and requesting the views of the War Department as to allowing the occupation of any part of the Conduit road.

With this bill I submit a report thereon, dated January 7, 1892, by Lieut. Col. George H. Elliot, Corps of Engineers, to whom the bill was referred.

This bill is almost identical with the bill (H. R. 13402), Fifty-first Congress, second session, as to which objections were set forth in a report transmitted by the War Department February 24, 1891, for which see House Ex. Doc. No. 274, Fifty-first Congress, second session, herewith.

As stated in my indorsement transmitting this report to the Secretary of War, in my judgment *the Conduit road should not be used for railroad purposes*. I am further of the opinion that the United States lands pertaining to *the Washington aqueduct should not be so used except as recommended in the inclosed report*.

Very respectfully, your obedient servant,

THOS. LINCOLN CASEY,
Brig. Gen., Chief of Engineers.

Hon. S. B. ELKINS,
Secretary of War.

OFFICE OF THE WASHINGTON AQUEDUCT,
Washington, D. C., January 7, 1892.

GENERAL: In compliance with your instructions of the 19th ultimo I have the honor to report that I have carefully considered Senate bill No. 804, current session, being "A bill to incorporate the Washington and Great Falls Electric Railroad Company."

[Here follow amendments which have been incorporated in the bill.]

Before proceeding to give the reasons for the suggested amendments to the bill, I should remark that although the population along the proposed route is now small and scattered, and the land along the Conduit road is mainly vacant land, that is to say, is either used for farming or garden purposes or is not used for any purpose, rapid changes are taking place and it is probable that the improvements that are being made by private enterprise will, within a few years, lead to a considerable increase of population along this road and in its vicinity.

Within two years several streets have been laid out on both sides of this road just beyond the lower (the distributing) reservoir, the land has been divided into lots, and several handsome houses have been built. Near Culvert No. 20, about $3\frac{1}{2}$ miles farther up the Conduit road and beyond the Maryland line, at the place called Glen Echo, is the terminus and power house of the Glen Echo and Tenallytown Railway. About three-quarters of a mile beyond Glen Echo, near Culvert No. 19, is the extensive establishment of the Chautauqua Association, and about one-half mile beyond

this is Bridge No. 4 of the Washington Aqueduct (Cabin John Bridge), and an hotel which is a popular resort at all seasons of the year, especially in summer.

Except in respect of the route of approach of the railway to the Conduit road this bill is, generally speaking, the same as bill H. R. 13402, Fifty-first Congress, second session, concerning which I reported to the Department by letter of the 18th of February, 1891. In that bill it was proposed to get to the Conduit road at the distributing reservoir by way of the "New Cut" road, and to pass to the northward of this reservoir. In this bill the railway approaches the Conduit road from the Canal road, and passes through the United States land pertaining to the distributing reservoir on the southerly side of the reservoir.

In respect of the route beyond the distributing reservoir it should be stated that the strip of land purchased by the United States for the Washington Aqueduct is of varying widths, but it is generally narrow, except at the culverts, where there are projections to the northward that were purchased for the purpose of controlling the beds of the streams that flow through the culverts under the conduit.

The conduit itself, which was designed to bring to Washington 100,000,000 gallons of water a day from Great Falls of the Potomac, 14 miles above the city, is a circular arch of brick, 9 feet in diameter on the interior, with a fall of about 9 inches to the mile. It follows, generally, the contour of the ground, is of varying depths under the surface, and is found sometimes in the middle, sometimes on one side, sometimes on the other of this strip of land.

The paved portion of the Conduit road indicates generally the position of the conduit under the surface, but not always, and there are many places where this portion of the road is not over the conduit. This is always the case at the tunnels in which the water is carried through spurs of the hills, while the road passes around the ends of these spurs.

I should also remark that both the conduit and the Conduit road are carried over the many deep ravines and streams that cross the route on high embankments, through which pass the large masonry culverts that carry the drainage of the great watershed of the Potomac north and west of the line of the conduit under the conduit. Between Great Falls and the distributing reservoir there are thirty of these streams, nine of which are this side of Cabin John Bridge, and are to be crossed by the proposed railway north of the line of the conduit. It is one of the most important of the duties connected with the aqueduct to see that the culverts and the beds of the streams above them are at all times kept free from obstructions that might in floods dam up the water in these deep ravines above the line of the aqueduct and endanger the aqueduct.

A railway following along the top of the bluff on the north side of the Canal road must cross a portion of the United States land south of the distributing reservoir, for the reason that this land at one place extends to the foot of the bluff. The major portion of this land, which is at about the level of the bottom of the reservoir, will doubtless be required for filtering basins or apparatus and the machinery connected therewith, and for the pumping machinery required by the District of Columbia for supplying the high land in the vicinity of Tenallytown and on both sides of the Tenallytown and Loughborough roads. There is, however, a deep ravine which could not be utilized for these purposes, and the crossing of this ravine would not be detrimental to the Government (provided it be restricted as provided in the amendment), and it would enable the railway to reach the high land west of the reservoir.

The remainder of the route to Cabin John Creek, as suggested in the amendment, differs somewhat from the route permitted by the bill.

The bill, as I understand it, permits the railway to run its entire length after leaving the distributing reservoir on the lands of the United States pertaining to the Conduit road and to the upper (the receiving) reservoir, except where this use of the land would be prohibited by the provision that the inner (that is to say, the southern) rail of the railway shall not be less than 34 feet from the middle line of the Conduit road, meaning thereby, I presume, the paved portion of the road. If the Conduit road, referred to in the bill be not intended to mean the paved portion of the road, the bill would permit the railway to run over the aqueduct itself in many places, and over many of the numerous manholes through which it is entered and inspected and cleaned.

The amendment provides that, except where the railway crosses the Conduit road and the land south of the receiving reservoir, it is to be constructed outside the boundary of the Conduit road lands and that the inner rail must nowhere be nearer to the middle of the paved portion of the Conduit road than 50 feet. [This is as the bill now provides.]

The first of these is for the reason that the Conduit road strip of land should be reserved exclusively for the purpose for which it was purchased by the United States (that is for the aqueduct and its accessories, and for their repairs in case of breaks in the aqueduct or other disasters imperiling the water supply to Washington), and

for the further reason that the land along and on both sides of the Conduit road belongs, almost exclusively, as I am informed, to the promoters of this company and is available for the railway.

I have suggested the change in the least distance of the inner rail from the middle line of the paved portion of the Conduit road from 34 to 50 feet, for the reason that the conduit is at several places along its route at a considerable distance north of the middle of this portion of the road, and that at one place it passes in a tunnel through a spur north of the road, which tunnel is on the line permitted by the bill as drawn, and would be in danger of being broken in and obstructed (cutting off the water supply) by the blasting required for the railway at this point, and for the further reason that at any distance less than 50 feet electric cars anywhere along this road will be dangerous to the thousands of persons, many of them women and children, who drive on the road in good weather.

At various places along the road the distance between the middle of the paved portion of the road is less than 50 and less even than 34 feet from the northern boundary of the road lands.

Horses that are not frightened at electric cars in the city, where there are so many other things to divert their attention, are greatly alarmed by them in the country, and many accidents have occurred on this account. It is a danger that can not be guarded against by fencing the road, for a runaway is liable to cause damage and loss of life on a crowded thoroughfare by collision a mile away from the place where it started. I may add in this connection that the Conduit road is about the only road leading out of the city that has not been spoiled and made unsafe for driving purposes by railways. It is one of the finest roads in this country, extending far up into Maryland amid the beautiful scenery along the Potomac. It is the only road to the city for a great many of the farmers of Montgomery County, and, being owned by the General Government, and paved for the protection of the aqueduct beneath it, it will doubtless always be kept in good condition.

The provision that wherever the railway shall cross any of the lands of the United States, as provided in the act, it shall be done only in such lines, in such manner, and on such conditions as shall be approved by the Secretary of War and accepted by the company is necessary, for there are many details that can not be otherwise provided for in an act of Congress.

The prohibition against the running of steam engines and cars over the road is necessary for the safety of the conduit, which is crossed three times by the road, and has been taken from the act authorizing the construction of the Washington and Arlington Electric Railway.

The provision relating to an authorization of this railway by the State of Maryland is necessary and has been suggested by a similar provision in the act concerning the Washington and Arlington Electric Railway referred to above. About one-half of the proposed line is in Maryland and one-half in the District of Columbia. The act of the State of Maryland of May 3, 1853, giving consent to the purchase by the United States of lands within the State for the purpose of the Washington Aqueduct, only granted to the United States authority "to exercise concurrently with the State of Maryland such jurisdiction over the same as may be necessary for the said purpose."

The provision for a deposit with the Treasurer of the United States by the company for defraying the cost of the repairs of damages that may be done by the company, is similar to the excellent provision of the District of Columbia respecting the change of the Washington and Georgetown Railway to the cable system, and it is highly essential in this case for the protection of the interests of the United States and the safety of the aqueduct.

The provision respecting any extension of the railway in the State of Maryland is necessary for the reason that in case the road be continued from Cabin John Creek to Great Falls, it may be done by authority of that State and without any action of Congress, on a line parallel to the strip of land pertaining to the aqueduct, and in a manner that may, except such provision be made, interfere with the safety of the aqueduct. Some of the largest culverts on the line are in Maryland, beyond Cabin John Bridge.

I must not forget to add in respect of the route of the railway that any railway along or near the Conduit road must cross the land pertaining to the receiving reservoir, for the reason that with the exception of the Canal road the United States land extends from the reservoir to the river. The bill provides that the railway is to cross this tract of land from the point A (see the plat of the receiving reservoir lands herewith) to the point B on a line not specified. I think this and the other portions of the route provided for in this amendment and in amendment 2 may be authorized without detriment to the public interests, provided it be done subject to the limitations and conditions provided for in the amendment, but not otherwise.

In that part of the application of the Washington and Great Falls Electric Railway Company to the Secretary of War of the 4th of May last, referring to that part

of the United States land beyond the distributing reservoir, it was asked that the company be permitted to cross the land south of the receiving reservoir; to cross the projections mentioned in this amendment, and to cross the Conduit road at three places, viz, just beyond the distributing reservoir; near the gate house of the upper (the receiving) reservoir; and at the foot of the hill (Dalecarlia Hill) on the west side of the reservoir, and it was the intention of the company, as shown on the drawings accompanying the application, to construct its railway between these crossings not on land of the United States, but on private land and north of the Government lines. The crossing of the projections referred to in this amendment (marked M and N on the plan of sections 9 to 15 of aqueduct lands) would not be detrimental to the interests of the United States or the safety of the aqueduct, if done subject to the limitations and conditions mentioned in the first amendment and in this amendment. [The bill provides for but one crossing of the Conduit road.]

The reasons for this amendment are that the regulations contained in the carefully drawn section 15 of the act of February 28, 1891, incorporating the Washington and Arlington Railway Company, are applicable and essential in this case, and that the route of the Washington and Great Falls Electric Railway is not under the jurisdiction of the Commissioners of the District of Columbia exclusively, but is partly under the Commissioners, partly under the Secretary of War, and partly under the authorities of the State of Maryland.

One of the most important adjuncts of the aqueduct, is the telephone line between this office and the two reservoirs and the head of the aqueduct at Great Falls. For the safety of our line and the instruments at the stations, it will be essential that either the company's wires or the wire of the aqueduct telephone line be covered with insulating material wherever they cross, to guard against the danger that might result from the falling of one wire upon the other in case of breaks at these points, but the railway company's wires can not be so covered and must be naked wires.

The bill does not provide for making any crossings for wagons anywhere on the line of the railway through the aqueduct land south of the distributing reservoir and elsewhere. That it should do so is essential. There is a provision for fences in the bill, but it can be better and more conveniently stated in the form suggested in this amendment.

I think it would be well that the bill should prohibit the erection of any of the company's buildings on the land of the United States. It is not necessary, for as before stated the private land everywhere along the route is almost entirely vacant land.

I believe a railway for the use of the people living along the Conduit road and its vicinity would be a convenience, and will shortly become a necessity, and that, if built, it will soon be extended to Great Falls.

Any such road must pass through the lands of the upper (the receiving) reservoir, for the reason stated in this report, but it is not necessary that it be located on the narrow strip of land pertaining to the Conduit road, and this part of the location would be in the highest degree objectionable.

The use of the United States lands by this railway (which is to be a gratuitous one, and not to be paid for, as was required of the Metropolitan Southern Railway) should be confined, as was proposed by the company in its application to the Secretary of War, of the 4th of May last, to the crossing of the lands of the upper and lower reservoirs, the three crossings of the Conduit road strip of land, and the crossings of the projections from this strip.

Very respectfully, your obedient servant,

GEORGE H. ELLIOT,
Lieutenant-Colonel of Engineers.

Brig. Gen. THOMAS L. CASEY,
Chief of Engineers, U. S. Army, Washington, D. C.

OFFICE OF THE WASHINGTON AQUEDUCT,
Washington, D. C., April 26, 1892.

SIR: Referring to your request of the 22d instant that I would confer with one of the representatives of the Washington and Great Falls Electric Railway Company respecting the suggestions contained in my report to the Chief of Engineers of the 7th of January last, then before the committee, on Senate bill No. 804, and also with Capt. Rossell, the Engineer Commissioner of the District of Columbia, respecting the proposed occupation by this company of the Canal road in Georgetown between the Arlington Bridge and Foxall road, for an elevated railway, I have the honor to state that I have conferred with Mr. Tyrer, one of the promoters of the railway, and have received the inclosed letter from the attorneys of the company, which was sent at his instance.

It was stated to the committee that if the railway should be kept 50 feet from the Macadam pavement over the conduit it would cut into and injure the grounds which

lie between the road and the house, north of the road, of two of the promoters of the railway. One of them is the house of Mr. Hurst, near Wastewear No. 3. This would undoubtedly and necessarily be the case if the railway be north of the Conduit road by reason of the figure and position of the Conduit road strip of land, the northerly side of which at this point is near the middle of the conduit and the pavement (Macadam) that covers the conduit for its protection, the conduit being, as the committee is aware, a 9-foot circular brick arch covered with earth.

In the amendment No. 1, suggested in my report of the 7th of January last, the line of the railway was assumed to be along this (the north) side of, and exterior to, the Conduit road strip of land, for the reason that this was the route proposed by the company in its application to the Secretary of War of May last, which application was not granted by him for want of authority of Congress, but there would be no objection whatever, as far as the interests of the United States and of the public are concerned, to allowing the company to locate its railway on either side of, and exterior to, this strip of land, or partly on one side and partly on the other as the topography of the ground may require, except that the crossings of the railway over the conduit and the Conduit road should be kept down to as low a number as possible.

If the railway between the distributing reservoir and the receiving reservoir and between the receiving reservoir and Cabin John Creek be on the north side of this strip (except at Dalecarlia Hill, near the receiving reservoir, where it must necessarily be on the south side), as was, and is now, proposed by the company, there must be three crossings of the Conduit road.

Without increasing the number of crossings, and in order to give the company all the facilities, not against the public interests, that are possible, I send herewith redrafts of the amendments Nos. 1 and 2 of my report of the 7th of January last.

The effect of these redrafts of amendments would be to give the company a right of way through the United States lands pertaining to the distributing reservoir, a distance of about 600 feet; a right of way around Dalecarlia Hill, through the United States lands pertaining to the receiving reservoir, a distance of about 4,000 feet, and in addition to permit the company to cross the aqueduct not to exceed three times, for the purpose of avoiding any difficulties like the one at Mr. Hurst's house and the somewhat difficult ground that exists at places both on the north and south sides of the Conduit road.

The total distance that the railway would run on the United States land whether it run on the north or the south side of the Conduit road strip of land, or partly on one and partly on the other, whether these or the original amendments be adopted, would be, say 4,900 feet, or about 1 mile.

I am still of the opinion that the railway between the lower (the distributing) reservoir and Cabin John Creek, except as above mentioned, should be built, not on the narrow strip of land purchased for the line of the Washington Aqueduct, but on the private land lying on both sides of this strip, which land is mostly unimproved and is, as I understand, almost entirely owned by the incorporators and promoters of the company, and I am also still of the opinion that for the safety of the driving public and for the reasons mentioned in my report of January 7, the railway should not be less than 50 feet from the middle of the macadam pavement over the conduit.

In respect of the encroachments that the railway would make on the grounds at the house of Mr. Baltzley, between Glen Echo and Chautauqua, the other of the two houses before mentioned, I should remark that there is now pending in Congress a bill that has been favorably reported by the Committees on the District of Columbia of both the Senate and the House of Representatives, authorizing the crossing of the Conduit road at Glen Echo by the Tenallytown and Glen Echo Railroad Company. This railroad is to be built on private land south of the Conduit road from Glen Echo to Cabin John Creek. As it is not probable that there will be, even if authorized by Congress, two parallel railways along the Conduit road between these points mentioned, I think it may be assumed that the Washington and Great Falls Railway will run its cars over the line of the Tenallytown and Glen Echo Railway, or that the cars of the latter will run over the former railway. This being the case, as Mr. Baltzley's house is north of the Conduit road, the interference with his grounds by the Washington and Great Falls Railway will be avoided.

In respect of that portion of the letter of the attorneys of the company that refers to the grade of the railway in Maryland beyond the upper (the receiving) reservoir, there is no objection to allowing the company to adopt any grade it may find desirable (provided it does not injure the Government land) and there was no limitation as to grade suggested in my report of January 7.

In respect of the proposition of the company to run an elevated railway on the Canal road in Georgetown, I should state that while it is no doubt practicable to construct the railway without interfering with the United States 48, 36, 30, and 12 inch water mains which lead from the distributing reservoir, under the Canal road, to the city, and occupy so much of the width of the road that I found great difficulty

in finding room enough for the 48-inch main between the other mains, which, like the 48-inch main, are laid for a considerable distance in trenches cut out of the solid rock, extreme caution and good judgment will be required to prevent the breaking of any of these mains in excavating for the foundations for the supports for the railway by blasting or otherwise, for the reason that this is one of the lowest points on the line of the mains, and the pressure of nearly 100 feet of head (about 43 pounds to the square inch on each main, which is nearly 40 tons to the running foot on the 48-inch main) is so great, and the discharge of water under this head would be so enormous in case of a break, that great damage would be done to the Canal road, the Chesapeake and Ohio Canal, and other surrounding property before repairs could be made.

The amendments to the bill that I have proposed will, however, I believe, protect the safety of the mains conveying the water supply to the city under the Canal road as far as they can be protected by legislation.

The retaining wall along the Chesapeake and Ohio Canal which borders the south side of the Canal road may be a danger to the railway. The masonry in this high wall is rotten and almost worthless, and barely able to sustain the load of earth behind it, as I discovered when I laid the 48-inch main. Before laying the sections of the main in the trenches prepared for them, they were placed temporarily along the Canal road, and during a rain storm a portion of the wall gave way into the canal, carrying several of the 5-ton sections of the main with it. I speak of this wall for the reason that the foundations of the supports for an elevated railway along the Canal road behind the canal wall will, for the safety of the railway and of the public, have to be carried very deep.

The width of the Canal road is generally about 40 feet, and, as I understand it, the width of the elevated railway is to be about 28 feet. Whether the columns supporting the railway will interfere with the carriage travel on the road, or confine it to such narrow limits that for the protection of the road changes should be made on the road covering or paving, and whether the condition of the canal wall will endanger the safety of the railway, will doubtless be discussed by Capt. Rossell, the Engineer Commissioner of the District of Columbia, who went over the road with me yesterday and will report to you respecting the interests of the District of Columbia and of the public.

If the occupation of the Canal road by the elevated railway be authorized the safety of the public will require that there be given to the Commissioners of the District of Columbia the most ample authority and power respecting the matters just mentioned, the plans of the structure, and the supervision of their execution, as well as the operating of the railway after completion.

I should add that the act of February 28, 1891, authorized the Washington and Arlington Railway Company to construct a surface railway on the Canal road in Georgetown, and the railway was to be commenced within one year and finished within three years from the date of approval of the act. The first limit of time expired on the 28th of February last, but as the railway was, as I believe, under construction on the Arlington side of the river before that date, I presume the company has the privilege of completing its railway at any time before February 28, 1894.

Very respectfully, your obedient servant,

GEORGE H. ELLIOTT,
Lieutenant-Colonel of Engineers.

Hon. JAMES McMILLAN,

Chairman Committee on the District of Columbia, United States Senate.

(Through the Chief of Engineers, U. S. Army.)



NORFOLK AND WESTERN RAILROAD COMPANY.

JUNE 10, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. MEREDITH, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany H. R. 3591.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 3591) to authorize the Norfolk and Western Railroad Company of Virginia to extend its line of road into and within the District of Columbia, and for other purposes, have carefully considered the merits thereof and submit the following report:

This bill was introduced on behalf of the Norfolk and Western Railroad, a body corporate under the laws of Virginia, which has been authorized by the legislature of that State to construct a railroad from a point on the Shenandoah Valley division of said Norfolk and Western Railroad, near Front Royal, Va., through the counties of Fairfax, Loudoun, and Alexandria to the Potomac River, at a point above the Aqueduct Bridge. The said company asks that authority be granted it to extend its line into the District of Columbia, and to provide necessary terminal facilities.

The construction of this road as proposed will be of great advantage to the citizens of the District of Columbia, and will open up communication with an extensive system of railroads which is well equipped for the transportation of passengers and the shipment of freight. It will develop a rich section of the State of Virginia, and enable the people living in the counties through which it passes to reach the markets of Washington and Georgetown; it will provide Georgetown, with its population of about 18,000 inhabitants and its large and diversified business interests, with a means for the prompt receipt and shipment of freights, and will relieve the business men of that community from the payment of large amounts for drayage, which they are now compelled to pay by reason of their remoteness from the stations of other railroads which enter the District of Columbia.

Beyond these local interests your committee sees in the construction of this new line of road a great addition to the comfort and convenience of the traveling public, and that in the competition for business both in passenger and freight traffic the general public will be greatly benefited.

Statistics which have been presented to your committee disclose the fact that there is a constant growth of the freight and passenger traffic upon the railroads which enter the District of Columbia, and demonstrate that it is wise to increase the facilities for access to and from the District by railroad transportation.

The bill has been carefully drawn, and such provisions as are neces-

sary to prevent its creating a monopoly in the use of the route have been inserted. Among these is a specific provision that the bridge across the Potomac, as well as the tracks authorized to be built shall be a public highway and open to the use of any other railroad which may connect with said Norfolk and Western Railroad either within the District of Columbia, or at or near the Virginia end of the bridge. Petitions signed by members of the Virginia legislature and by a large number of citizens of the District, and copies of resolutions adopted at a meeting of the citizens of Georgetown, praying the passage of this bill have been filed with your committee.

The bill is now reported to the House with the approval of your committee and the recommendation that it be passed with the following amendments:

Amend section 1, line 9, by inserting after the word "bridge" the words "at or near the Three Sisters, or such point west thereof, and upon such plans as may be approved by the Secretary of War."

Amend section 1, lines 12 and 13, by striking out the words "Rock Creek, and crossing said creek by a suitable bridge," and inserting the words, "Thirtieth street or some point west thereof, and thence to a point on Rock Creek not less than 100 feet north or south of the K street bridge, and thence crossing said creek by a suitable bridge, to be not less than 20 feet clear above the water line of said creek."

Amend section 1, line 33, by inserting after the word "tracks" the words "in the aggregate."

Amend section 1, line 36, by inserting after the word "highway" the words "for any railroad connecting in the District of Columbia or at or near the Virginia end of the bridge."

Amend section 2, line 3, by inserting after the word "tracks" the words "the Georgetown Barge, Dock, Elevator, and Railway Company or."

Amend section 3, line 4, by inserting after the word "route" the words "subject to the approval of the Commissioners of the District of Columbia."

Amend section 4 by adding at the end thereof the words:

Provided, That the said company, its successors and assigns, shall, in securing the right of way through private property within the District of Columbia, stipulate that the District of Columbia shall have the right, without charge of any kind, to cross the said right of way with any public sewer, watermain, conduit, or other underground construction laid or proposed to be laid for the public safety, comfort, or health; and the said company, its successors and assigns, shall at all times freely and without charge or hindrance of any kind permit the legally constituted authorities of the District of Columbia to cross the said right of way in the District of Columbia, wherever necessary, in the construction of any public sewer, watermain, or other construction necessary for the public safety, comfort, or health.

Amend section 6, line 2, by striking out the words "two years" and inserting in lieu thereof the words "one year."

Amend section 6, line 3, by striking out the word "three" and inserting in lieu thereof the word "two."

Amend section 7, line 1, by striking out the word "Congress" and inserting in lieu thereof the words "the Commissioners of the District of Columbia."

Amend section 8, line 12, by filling the blank with the word "three."

OVERHEAD ELECTRIC WIRES IN THE DISTRICT OF COLUMBIA.

JUNE 10, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. POST, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany H. R. 8504.]

The Committee on the District of Columbia, to whom was referred House bill 8504, report as follows:

Prior to the act of July 18, 1888 (25 Stat., 323), the only system used in the District of Columbia for telegraphic, telephone, or electric lighting purposes was the ordinary overhead system of wires. Telegraph, telephone, and electric light companies were operating in the District, but their service was entirely by use of overhead wires.

The act of July 18, 1888, above cited, provided that after the 15th day of September, 1888, the commissioners of the District should not permit or authorize any additional wires to be erected or maintained on or over any of the streets and avenues, with a proviso authorizing the commissioners, in their discretion, to permit the overhead wires of any existing company operating in the District of Columbia to be laid underground, this privilege, however, to be limited to the duration of the Fiftieth Congress.

The act of March 2, 1889 (25 Stat., 804), practically reënacted that provision of the act of July 18, 1888, authorizing the placing underground of overhead wires and extended the time within which that might be done to the expiration of the Fifty-first Congress.

By act of August 6, 1890 (26 Stat., 304), Congress created a board of skilled persons to be appointed by the President whose duty it was to investigate the whole system of telegraphing, telephoning, and electric lighting in the District of Columbia, and to report to the President the best method for placing all overhead wires underground. This commission was appointed by the President and within time prescribed by the act made full report to the President, which was transmitted to Congress, and was printed as Ex. Doc. No. 15, Fifty-second Congress, first session. This commission reported (page 20) that the best system for operating electrical wires underground was the rectangular clay conduit, manufactured under the Lynch-Lake patent.

By act of March 3, 1891 (26 Stat., 1073), it was provided that until action by Congress upon the report of the Board referred to in the preceding paragraph, or until the 1st day of April, 1892, whichever should first occur, the Commissioners should not permit the additional construction of more than 5 miles of conduits, each, for telephone and electric lighting purposes; that this should apply to all prior permits as well as those thereafter granted, but not to necessary street or house

connections. No action has ever been taken by Congress upon the report of the Board above referred to.

It has been shown to your committee that under the above provisions of law prohibiting the additional construction of overhead wires, and authorizing such overhead wires to be placed under ground, the United States Electric Lighting Company which, prior to September 15, 1888, had in operation more than 50 miles of authorized overhead wires, has placed under ground about 35 miles of the same. It still has in operation considerably more than 15 miles of overhead wires.

It appears that this company, since the first provision of law prohibiting further extension of the overhead system and permitting the change to underground conduits, has exercised considerable diligence in endeavoring to place its entire system underground. Its desire seems to be to comply with the manifest intent of Congress as evidenced by the above-cited legislation to make its entire service by conduit and to remove its overhead wires and poles. It appears, however, that the Commissioners of the District have construed these provisions of law so as to not only prevent the erection of any additional overhead wires, but also as leaving them without authority to grant any further permits for placing underground the wires of the United States Electric Lighting Company. In other words, under their construction of the law there can be no extension of the overhead system and nothing further can be done to comply with the manifest intention of Congress to place the remaining overhead wires underground.

Your committee is of opinion that the act of March 3, 1891, above referred to, by necessary implication of legislation, at least, authorized the Commissioners, after the 1st day of April, 1892, to grant permits for the additional construction of conduits, at least to the extent of all overhead wires owned by the said company. But inasmuch as the Commissioners appear to have refused permits to place said wires underground, and inasmuch as without further legislation any additional extension of the system of electric lighting seems impossible, your committee recommend the passage of House bill No. 8504, which specifically authorizes the Commissioners to extend, under such reasonable conditions as they may prescribe, the underground system of electric lighting now in use by said company whenever in their judgment the public interests require the same. This provision also applies to the telephone service in the cities of Washington and Georgetown. The United States Electric Lighting Company has adopted and uses the system of conduits recommended by the board appointed under the act of August 6, 1890. Any extension of its system, therefore, will be in strict conformity to the recommendations of the Board of Commissioners appointed under said act.

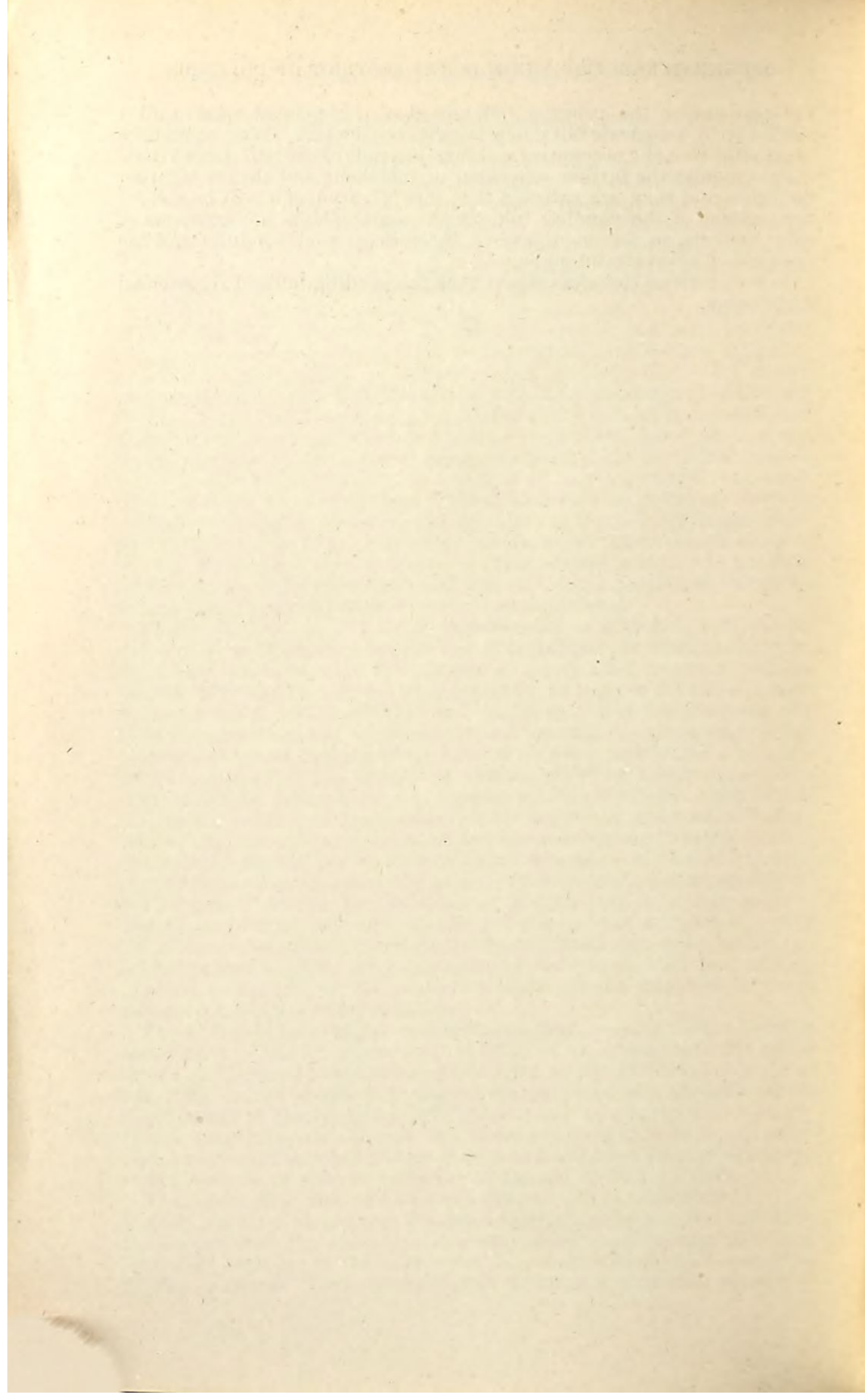
The House bill now under consideration also provides for the placing underground, on or before July 1, 1893, of all overhead wires maintained and operated by any company prior to the 15th day of September, 1888, or the abatement thereof thereafter by the Commissioners upon failure of the company owning the same to comply with the law. It also authorizes and directs the Commissioners to remove any additional system of overhead wires that may have been erected upon any street, avenue, or alley in violation of the act of July 18, 1888.

Your committee also find that the present bill is substantially if not exactly the same as one recommended for passage by the District Commissioners, with the exception that the said Commissioners propose a system of taxation of the companies in consideration of an extension of the systems. Your committee is of opinion that this subject is

not germane to the pending bill, and that if legislated upon at all it should be by a separate bill independently considered. Your committee is satisfied that the necessities and just demands of the citizens of Washington require the further extension of telephone and electric lighting facilities, and they are satisfied that this situation can best be met by the passage of the pending bill, which contemplates an extension of said systems, so far as necessary, by underground conduits and the removal of all overhead wires.

You committee therefore report back the pending bill and recommend its passage.





INVESTIGATION OF RAILROAD COMBINATIONS.

JUNE 10, 1892.—Ordered to be printed.

Mr. WISE, from the Committee on Interstate and Foreign Commerce,
submitted the following

REPORT:

[To accompany Mis. Doc. —.]

The Committee on Interstate and Foreign Commerce have considered a resolution, a copy of which is hereto subjoined, offered by Mr. Stout, in the House of Representatives, on the 12th of February last, and referred to them, and respectfully report:

That while that resolution may be inaccurate in some of its statements, it furnishes sufficient grounds for an inquiry by Congress into a transaction which probably vitally affects the interests of the people of the United States. It is very generally and confidently alleged throughout the country; it is asserted in suits at law and bills in equity pending in the courts; it is currently believed on the exchanges, in which such things are most narrowly watched, that a combination of the three leading anthracite coal roads, the Philadelphia and Reading Railroad Company, the Central Railroad Company of New Jersey, and the Lehigh Valley Railroad Company, together with the companies which these several roads control, and a combination of this combination with the Port Reading Railroad Company and other transportation and producing companies, have been effected; and that these combinations are for the purpose of creating a monopoly in the production and transportation of anthracite coal and to control its price in the market; that the market price has already been advanced without any other excuse than to further the interests of the monopoly (and this at a season of the year when the consumption of anthracite coal is at its minimum), and that said combinations propose to advance the price still further from time to time.

And as it is apparent that State legislation or action is insufficient to cope with these combinations, extending as they do, if they exist, over several States, and constituting a menace to all the people of the United States, it is of vital importance to ascertain (1) whether the alleged combinations or any similar combinations exist; (2) whether any law of Congress and particularly whether "An act to protect trade and commerce against unlawful restraints and monopolies" (Chap. 647 of the Supplement to the Revised Statutes) have been violated by the companies and collateral companies said to form, or which may be found to form, the said combinations; (3) what additional legislation in such case, on the part of Congress, may be necessary, expedient, and proper; therefore:—

Resolved, That the Committee on Interstate and Foreign Commerce, or such portion of them as they may specially designate for the purpose,

be empowered and directed to investigate, at the earliest practicable moment, whether the alleged combinations of the Philadelphia and Reading Railroad Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, and the Port Reading Railroad Company, or any combination between any of these roads and any other roads or canals or producers of coal, for any illegal or improper purpose, exist, and, if such combinations do exist, the effect thereof on the production, transportation, distribution, and price of anthracite coal, and upon commerce among the several States, and to report to the House any and all facts in relation to the subject-matter of the investigation which the committee of investigation herein provided for may ascertain, and to make such recommendations as the said committee may agree upon; and that said committee be authorized to sit during the session of the House or during the recess of Congress, and at such place or places as it may find necessary; to employ a clerk or stenographer, to administer oaths, issue subpoenas, compel the attendance of witnesses and examine them, and compel the production of books and papers; and that a sum, not to exceed \$10,000, sufficient to pay the expenses of the committee herein provided for shall be immediately available and payable out of the contingent fund of the House on the order of the chairman of said investigating committee; and all vouchers for any such expenditures shall be likewise certified to by the chairman of said investigating committee.

The subjoined is a copy of a resolution offered in the House of Representatives on the 12th of February, 1892, by Mr. Stout, and referred to the Committee on Interstate and Foreign Commerce.

FEBRUARY 12, 1892.

Mr. Stout submitted the following; which was referred to the Committee on Interstate and Foreign Commerce:

Whereas the Reading, Lehigh Valley, the Jersey Central, Delaware, Lackawanna and Western railways, operating lines in different States, and representing a nominal capital of \$600,000,000, the plant of which could be duplicated at one-half the sum, have combined their capital: Therefore,

Resolved, That the Committee on Interstate and Foreign Commerce be requested to investigate the facts of the case and report whether such consolidation should not be prohibited by national law; and whether a bureau of interstate transportation should not be organized headed by a Cabinet officer, known as the Secretary of Commerce.

Attest:

JAMES KERR, *Clerk*.

The subjoined is a letter from the Interstate Commerce Commission in reply to an inquiry addressed to that Commission by the Committee on Interstate and Foreign Commerce, as to whether the Commission has entered upon any such investigation as is contemplated in the resolution of Mr. Stout, printed herewith:

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, March 31, 1892.

The Committee on Interstate and Foreign Commerce, House of Representatives:

SIR: Your communication of the 29th instant, inclosing copy of proposed resolution directing your committee to investigate and report concerning the recent consolidation of the Philadelphia and Reading with other railroads, and requesting to be informed whether this Commission has entered upon any investigation of such consolidation, is received.

The act to regulate commerce does not give the Interstate Commerce Commission jurisdiction of matters which relate only to dealings between railroad companies and have no bearing upon the rights of the public to impartial treatment and reasonable and equal charges in the transportation of interstate commerce. The magnitude

of the railroad deal referred to is calculated to arouse grave apprehensions of resultant injuries to the public welfare, but until the attention of the Commission is called to some contravention of the interstate commerce law, caused or made possible by the combination of railroad interests, no grounds appear to exist upon which an investigation of the consolidation could properly be instituted by the Commission under that law.

A principle laid down in a decision of the Commission where the transportation of coal oil was the subject of controversy may be of interest in this connection:

"The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets can not create a right on the part of the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competition, nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that give profitable markets to a portion of its patrons and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business, but its duty to the public requires that its service must be alike to all who are situated alike." (Rice, etc., v. W. N. Y. & P. R. Co.)

The general subject of railroad consolidation was discussed at some length by the Commission in its Third Annual Report to Congress, pages 76 to 82, and it was also mentioned in the Fourth Annual Report on page 64. For your convenient reference copies of these reports are sent herewith.

Very respectfully,

MARTIN A. KNAPP,
Commissioner.

O

CHEROKEE OUTLET.

JUNE 13, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PEEL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 9190.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 8227) to ratify and confirm the contract made by the United States, through its commissioners, with the Cherokee Nation of Indians, have had the same under consideration, and after due deliberation beg leave to submit the following report:

The contract sought to be ratified by this bill was concluded between the United States and the Cherokee Nation of Indians on the 19th day of December, 1892, by David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners appointed by the President of the United States under and by authority of an act of Congress approved March 2, 1889, for that purpose, and Elias C. Boudinot, Joseph A. Scales, Roach Young, William Triplett, Thomas Smith, Joseph Smallwood, and George Downing, the duly and legally appointed delegates of the Cherokee Nation of Indians by act of their national council.

This contract was considered and concluded between the high contracting parties under the most approved rules regulating contracts between nations, and is the most important one ever made between our Government and these most progressive Indians, and will, if ratified, make splendid homes for thousands of our homeless and most deserving people, and at the same time make the Cherokee people the richest of all their brethren, and will place them upon the high road to American citizenship, with all the rights and privileges of other citizens of the United States, with corresponding responsibilities to the Government.

The lands embraced in this contract is the long-coveted country known as the Cherokee Outlet, lying west of the States of Arkansas and Missouri and south of Kansas, and is described in the first article of the agreement, as follows:

The Cherokee Nation cede and relinquish all its title, claim, and interest of every kind and character in and to that part of the Indian Territory bounded on the west by the one hundredth degree of west longitude, on the north by the State of Kansas, on the east by the ninety-sixth degree of west longitude, and on the south by the Creek Nation, the Territory of Oklahoma and the Cheyenne and Arapahoe Reservation, created or defined by Executive Order dated August 10, 1869, containing 8,144,682.91 acres more or less.

This large estate was given to these Indians for a valuable consideration by the United States under treaty of 1828 and 1835, and was afterwards patented to them by the Government, since which time they have held the same as their own. Under the treaty of 1866 they ceded

this country to the Government for the purpose of settling and locating other friendly Indians upon, under which treaty several small bands and tribes were located upon the eastern portion of this tract, and now by this contract they sell outright all their interest to the Government for white settlement.

In consideration for this vast tract of country the Government agreed to pay to the Cherokee Nation of Indians the sum of \$8,595,736.12. A portion of the tract herein conveyed is occupied by other tribes under the treaty of 1866, containing about 2,000,000 acres, leaving for actual settlement by our own people at present something over 6,000,000 acres.

It will be noticed that under the contract the Cherokee Nation sell and relinquish all their title to that part occupied by other tribes under the treaty of 1866, as well as to that not occupied, so that when the Government makes purchases from those smaller tribes for their interest the title to the entire eight millions and more will be clear and ready for white settlement, so at present this contract will open to immediate settlement over 6,000,000 acres and the other 2,000,000 will not be opened up until the Government acquires the Indian title from those smaller tribes now residing on that part occupied by them.

This contract also settles many vexed questions heretofore existing between our Government and these people, yet the Government assumes no new responsibilities, but reaffirms former treaties, and binds herself to see that they are carried out. This contract was promptly ratified by the Cherokee national council, and to be complete only awaits similar action upon the part of Congress. The contract is an entirety, and must be ratified as made; no change can be made in the terms of the contract without the consent of the Cherokee Nation lawfully and regularly obtained.

Your committee, after due consideration, believing that the contract will prove, if executed, a blessing both to the United States and the Cherokee people, do recommend its speedy ratification. A like recommendation is made by the honorable Commissioner of Indian Affairs, the honorable Secretary of the Interior, and by his excellency the President of the United States. When ratified the lands become a part of the public domain, and belong absolutely to the United States, and the Congress in the act of ratification has the power to dispose of the same in such way and in such manner as may seem just and right.

Therefore the bill hereby reported fully ratifies the agreement and appropriates the money to pay for the land as stipulated in the contract, and at same time seeks to dispose of the lands under the homestead laws of the United States in a way that the honest home seeker, though humble and poor, may acquire a good home for himself and family for a small sum and upon terms that will enable him from his own industry to pay for the same.

Your committee have been led to this action from the well-founded belief that the lands heretofore opened to settlement in Oklahoma has not fallen to the honest and deserving homeseeker as a rule but, upon the contrary, have largely fallen into the hands of "sooners," land sharks, speculators, race riders, claim jumpers, and townsite grabbers, etc., and the man who wants and needs a home for the sake of a home has been almost if not universally left.

The fifth section of the bill herein reported requires the President, within ninety days after the approval of the act, to issue his proclamation declaring the lands open to settlement under the homestead laws of the United States only, said proclamation to fix the time for entry, which shall be at least thirty days before the day fixed.

The sixth section of the bill declares that no person who is the owner in his or her own right of 160 acres, or who shall be the owner of real estate in any city or town of the value of three thousand dollars, shall be allowed to take or enter any of said lands.

The seventh section provides that persons who have heretofore obtained title to as much as 160 acres of lands under the homestead laws, shall not be allowed another homestead on these lands. Persons who have obtained title to less than 160 acres under the homestead laws may enter enough of these lands to equal 160 acres. Persons who have homesteaded and failed from any cause to procure title, or have commuted their homesteads by paying to the Government \$1.25 per acre, can homestead the lands in this contract, provided he or she, as the case may be, is otherwise entitled to homestead under this act.

The eighth section provides that no person who has heretofore made homestead entry of any of the Indian lands heretofore opened to settlement in Oklahoma, or who has occupied or set up claim to any of such lands, shall be allowed to homestead any of these lands unless he or she, as the case may be, have lost the same by due process of law upon contest or otherwise. The object of this section is to prevent professional land-grabbers and claim-jumpers, for speculative purpose, from obstructing the honest homeseeker in establishing his entry.

The ninth section requires that all entries shall be initiated by actual entering upon and occupying the land and the commencement of substantial and lasting improvements thereon, and to make his filing in local land office afterwards.

The object of this section is to prevent a conflict of claimants growing out of the practice of filing declaratory statements by some while others go to the land itself. This section will put all persons on an equal footing and prevent further conflicts of this kind.

The tenth section requires the President to fix the time for entering upon the land and fixing penalty of forfeiture of all rights under the act, with fine and imprisonment for entering before the time fixed in the proclamation, the only exception being to persons who enter under authority of law. They are not subject to the penalty of fine and imprisonment. They would only forfeit right to take out homestead lands.

The object of this section is to prevent a repetition of the disgraceful conduct of deputy marshals and other officers of the United States in the opening and settlement of the first lands in Oklahoma.

Many deputy United States marshals and other officers sought to be made such for the sole purpose of getting inside or upon the lands before the time fixed for entering, and thereby acquired valuable advantages not enjoyed by others equally worthy, but whose politics or social standing did not meet the favor of the appointing power. Under this section officers can only go in or upon the land before the time fixed for entry as officers and can not thereby acquire any advantage.

Section 11 fixes penalty of fine and imprisonment for any person to enter upon said lands and occupy or attempt to hold any of said lands who is not entitled to homestead under this act.

The object of this section is to prevent persons not entitled to homestead under this act from going upon the lands and setting up claims for the purpose of selling out or blackmailing some honest settler who is entitled, etc.

Section 12 makes it unlawful with severe penalty for any person, persons, associaton, company, or corporation to procure any other person, persons, association, company, or corporation to homestead or other-

wise claim or set up title to any of said lands with the intent of acquiring title to the same from them.

The object of this section is to prevent persons from homesteading with intent of transferring their rights to some other person for speculative purposes, the object of the entire act being to place these lands in the hands of the honest bona fide home seeker for a permanent and lasting home.

Section 13 reserves the sixteenth and thirty-sixth sections for school purposes.

Section 14 provides that the settler, in addition to the local fees of the land office, shall pay to the United States \$2.50 per acre for all lands east of $97\frac{1}{2}^{\circ}$ west longitude, and \$1.50 for all lying west of $97\frac{1}{2}^{\circ}$ west longitude and east of $98\frac{1}{2}^{\circ}$ west longitude, and \$1 per acre for the remainder, provided in each and all cases the payments may be made in two equal installments, one-half at the end of two years from date of entry and the other half at the end of four years from date of entry.

The object of this section is to reimburse the Government or return to her from the settlers the money that she paid to the Indians, and to regulate the price of the land to some extent, according to its intrinsic value, the eastern portion being much the best for agricultural purposes. The middle third is good, but not so fine as the eastern third. The west part is said to be better for grazing purposes than agricultural, therefore less valuable to the home seeker. The payments by the settler are intended to make it as easy on him as possible; the first payment not being due for two years he is enabled to make two crops before the first payment is due and four crops before last payment is due. Your committee believe the Government can well afford to favor the farming class of its citizens to that extent.

Section 15 simply provides for payment to the Cherokee Nation as stipulated in the agreement.

Section 16 provides that before the lands are opened to settlement the President shall appoint a commission of three competent persons, not more than two of whom shall belong to the same political party, to lay off said lands into suitable counties, and locate the county seats of each, to have same surveyed into lots, blocks, and squares, streets, and alleys, reserving sufficient for public parks and for county building purposes; and to appraise all lots and blocks intended for private use at their true value, and sell them to the highest bidder at public auction, after giving due and proper notice for one-third cash, the remainder on four and eight months' credit; deeds to be made after all purchase money has been paid; the net proceeds of such sales to be placed in the county treasury for the use of the common school fund of the county where said county seat is located.

The object of this section is to put a stop to the disgraceful scramble and fraud as your committee believe has heretofore existed in Oklahoma Territory in town-site locations. This method will require the county seats to be quietly located at the proper place, and will allow persons wanting town lots, either for business or residence, to purchase in open market with honest competition and a good title procured, the proceeds to be used to educate the children not of the town alone, but of the entire county.

Your committee having made some slight changes in the original bill, beg to report the following as a substitute; and in view of the fact that thousands of our most worthy people are without homes and anxious to locate upon these magnificent lands, and believing that the bill here

reported is sufficiently guarded to cut off and prevent the unseemly and shameful frauds heretofore practiced in this new and blooming country and to place these the greatest and best of all lands in that section in the hands of the honest and upright tillers of the soil, from whose hard and honest labor the greatest blessings to mankind flow, we urge and recommend the passage of the bill here offered at the earliest possible moment.

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HEIRS OF TARLETON WOODSON, DECEASED.

JUNE 13, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COBB, of Missouri, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 9013.]

The Committee on War Claims, to whom was referred the bill (H. R. 9013) for the relief of the heirs of Maj. Tarleton Woodson, deceased, submit the following report:

This claim was transmitted to the Court of Claims for a finding of facts under the provisions of the act of March 3, 1883, commonly known as the Bowman act, in 1888, by the Committee on War Claims of the House of Representatives.

The claim has been returned to the committee by the Court of Claims, with the following findings of fact, to wit:

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 19, 1892.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings filed by the court in the aforesaid cause, which case was referred to this court by the Committee on War Claims, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES F. CRISP,
Speaker of the House of Representatives.

[Court of Claims. Nathaniel Venable, administrator of Maj. Tarleton Woodson, deceased, vs. The United States. No. 6533.]

At a Court of Claims held in the city of Washington on the 2d day of May, A. D. 1892, the court filed the following findings of fact, to wit:

FINDINGS OF FACT.

The claim in this case was transmitted to this court April 13, 1888, by the Committee on War Claims of the House of Representatives. The case was brought to trial in December, 1891, the claimants being represented by their counsel, John S. Duffie, esq., and the defendants by the Assistant Attorney-General, John B. Cotton, and their assistant counsel, John C. Chaney, esq.

The court upon the evidence finds the facts to be as follows:

I.

Maj. Tarleton Woodson, a native-born citizen of Virginia, enlisted as a private in Capt. Charles Scott's company during the year 1775. He served in that company until regular regiments were raised, when he was appointed an ensign in the First

Virginia Regiment, commanded by Patrick Henry. He served as an ensign and lieutenant in that regiment until the beginning of the year 1777, when he was appointed captain and subsequently promoted to be made major in Col. Moses Hazen's Independent Continental Regiment. He was present at the capture of the town of Norfolk, at the battle of White Plains, in the retreat of Gen. Washington through New Jersey, at the battle of Trenton, and at the surrender of Cornwallis; he was also a prisoner of war for more than three years. He appears to have been an officer of good standing and subsequent to the war a well-known and greatly respected citizen. Maj. Woodson always claimed that he was entitled to half pay for life, or commutation thereof, five years' full pay. He presented his claim at an early day and for many years to various officers and also to Congress. It was never allowed, but was never expressly rejected, the refusals appearing to rest upon the ground that the officers to whom it was presented had not authority to adjust it or that it was barred by some statute. The facts as they now appear from the evidence in the case are as follows in the succeeding findings:

II.

Maj. Woodson appears to have served in the command known as "Hazen's Regiment," subsequent to the time of his exchange as a prisoner of war, until the 1st January, 1782. About that time he received a furlough which extended to and expired on the 1st March, 1782. At the time when this furlough expired he had not returned to the regiment; nor did he again return to it. Consequently, when the command was discharged from the service he was not present and did not receive his final pay. It does not appear that he ever received any certificate or formal discharge which would enable him to obtain his pay; and no evidence has been produced to show that he ever was paid. The court accordingly finds that there remains due to him, or to his estate, for his last year's service in the military establishment of the Government, \$600, with interest at 5 per cent per annum, under the decision of the Supreme Court in the case of the *United States v. McKee et al.* (91 U. S. R., 442).

III.

The resolutions 3d October, 1780, and 21st October, 1780 (3d Journal Cong., pp. 532-538), provided for the reorganization of the military forces on Continental establishment by the consolidation or reduction of regiments. In the case of the Virginia troops the eleven regiments in the line were reduced to eight. The resolutions also provided for officers who should be "thrown out" or become supernumerary by this consolidation that they should receive half-pay for life. But it does not appear that Maj. Woodson became a supernumerary under or by reason of this reduction; and under the decision of the Supreme Court in the case of *Williams, administrator of Taylor, v. The United States* (137 U. S. R., p. 113) Maj. Woodson did not become entitled to half-pay for life, because he may subsequently, for other reasons, have become a supernumerary.

IV.

The resolution of the Continental Congress, October 21, 1780, provided "that the officers who shall continue in the service to the end of the war shall be entitled to half-pay for life," and the resolution March 22, 1783, provided that five years' full pay should be allowed to "such officers as are now in the service and shall continue therein until the end of the war." But it does not appear that Hazen's regiment was one of the Continental line or commands designated or referred to in the resolution October 21, 1780, or that Maj. Woodson continued in the service until the end of the war.

BY THE COURT.

Filed May 2, 1892.

A true copy.

Test, this 19th day of May, A. D. 1892.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Your committee recommend that said findings of the Court of Claims be carried out by the passage of the bill, which is in harmony with the conclusions reached by the court.

MISSION INDIAN COMMISSION.

JUNE 15, 1892.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LYNCH, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany S. 2049.]

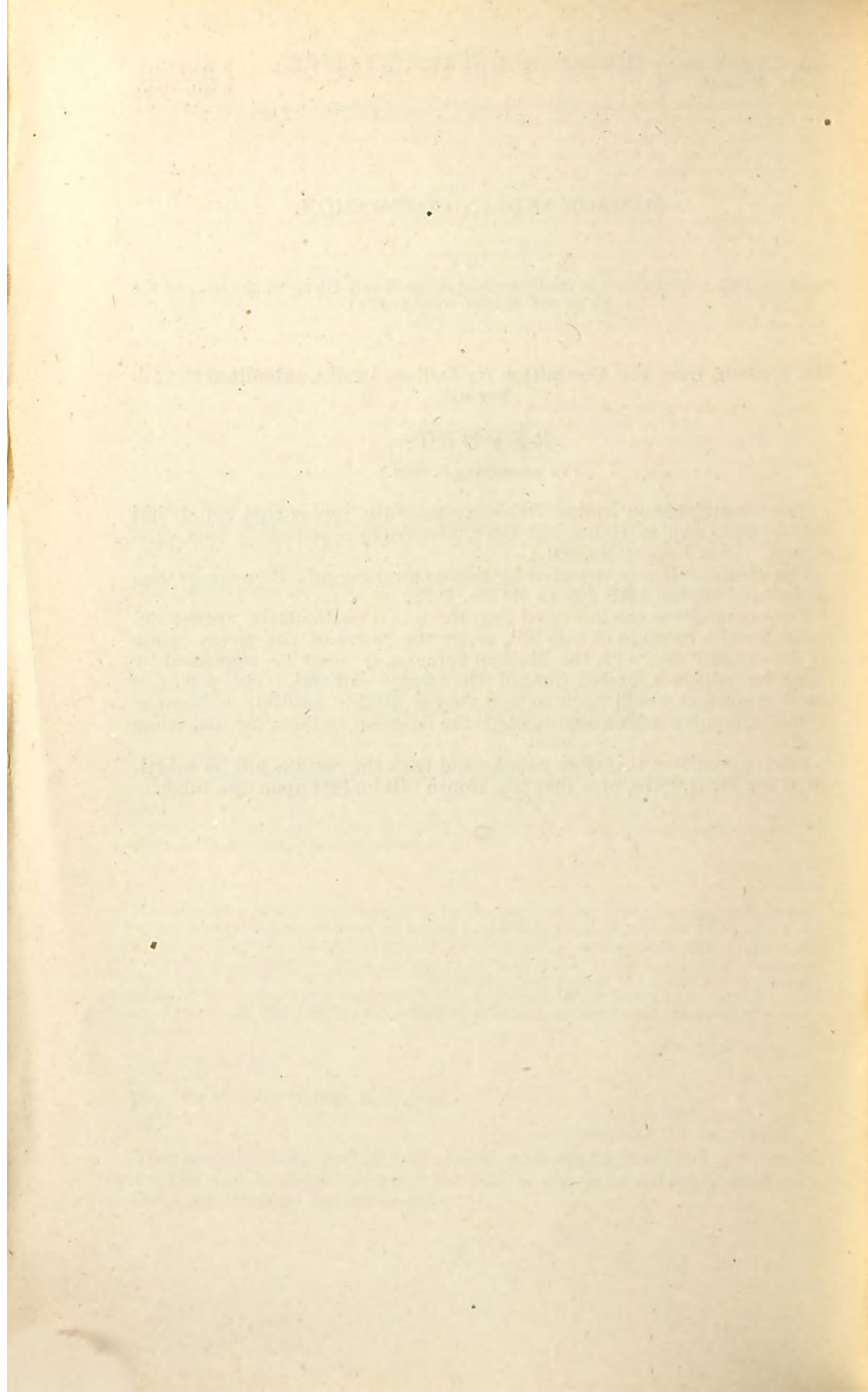
The Committee on Indian Affairs respectfully report that Senate bill 2049 is the same as House bill 6076, heretofore reported by this committee. (See Report No. 691.)

The House bill was reported by this committee and its passage recommended on the 14th day of March, 1892.

Your committee are informed that there is a particularly urgent demand for the passage of this bill, as, by the terms of the treaty made by the commission with the Mission Indians, it must be confirmed by Congress within a limited time or the treaty will fail. The report of the commission would seem to be a very equitable and fair settlement of the difficulty which surrounded the Mission Indians for some time past.

Your committee therefore recommend that the Senate bill be substituted for H. R. 6076, and that the House bill be laid upon the table.





AMERICAN SHIPBUILDING.

JUNE 15, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. FOWLER, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT:

[To accompany H. R. 8818.]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H. R. 8818) to encourage American shipbuilding, have considered the same and report it back without amendment, and recommend its passage for the following reasons:

The bill grants the same privilege to the British-built steamship *China*, a vessel of about 5,000 tons register, as has been recently granted by act of Congress to the Inman steamships *City of Paris* and *City of New York*. The *China* is owned by a British corporation known as the China Steamship Company, limited, the whole of whose capital stock is owned by the Pacific Mail Steamship Company, a small percentage thereof being set apart to qualify certain English gentlemen to act as directors of the British corporation.

The Pacific Mail Steamship Company is a corporation incorporated nearly forty years ago under the laws of the State of New York, and has been actively engaged since its organization in developing foreign trade of the United States with other countries. Its lines now embrace the service between New York and Colon on the Atlantic Ocean, and that between San Francisco on the north and Panama on the south, including nearly every port between those termini, some thirty ports of call in all. In addition to this service it performs a regular service between San Francisco and Yokohama in Japan, and Hongkong and other Chinese ports. This company during its existence has built or purchased about fifty ironclad American built steamships, and has now in service over twenty of these ships having contracted for and partly finished, and in one instance completely finished, four entirely new ironclad A 1 steam propellers of an average of about 3,500 tons each, during the past year. All the ships it has ever owned have been of American build, with the exception of the *China* and two or three other ships of small tonnage; but these others were derelicts which were practically rebuilt in the United States and became thereby entitled to American registry. It owns but one other small British-built boat, the *Barra-couta*. The *China* was built in England under the following circumstances. The company had employed in its China business a number of vessels of large tonnage, all of American build, among others the *City of Tokio*, of 5,000 tons register, which was lost at sea and was uninsured.

About this time the Canadian Government and the Government of Great Britain, threatened to put on a line of British built first-class

steamships between Vancouver and Yokohama, and to subsidize them heavily; a threat which has since been carried into effect, these steamers being now in service and receiving from the British and Dominion governments subsidies and compensation to the extent of more than \$500,000 per annum. To anticipate this rapidity of action in procuring a substitute for the *City of Tokio* was necessary; besides the company was in financial straits and economy in expenditure was a necessity. American shipyards were busy and the Pacific Mail was then and is now contending also with the Occidental and Oriental line, a British line plying between San Francisco and Yokohama. Under these circumstances the company was compelled to have the *China* built on the Clyde instead of the Delaware. She is a first-class ship in every respect. She has no contractual relations with the British Government such as the Inman steamers had. During the recent trouble with Chile the Secretary of the Navy had arranged to obtain her from the Pacific Mail Steamship Company in the event of hostilities, and your committee is assured that the Navy Department will put itself on record in favor of the proposed legislation. If this bill be passed the company will not only build a vessel as required by the bill in an American shipyard of equal tonnage, but your committee is assured by the Company's representative that it will build two vessels of at least 8,000 tons each.

The credit is due to the Pacific Mail Steamship Company of having done more to keep the American flag afloat in foreign waters than have all other companies combined.

The passage of this bill can not injure a single industry in the United States. On the contrary it will give immediate employment to a large number of men in our shipyards, and the committee feel assured that this act will stimulate not only foreign commerce under the American flag, but shipbuilding by American shipyards, besides furnishing a magnificent cruiser, ready at an instant's notice for naval use in case of war or other emergency.



BRIDGE ACROSS THE ST. LAWRENCE RIVER.

JUNE 15, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. BYNUM, from the Committee on Interstate and Foreign Commerce,
submitted the following

REPORT:

[To accompany H. R. 9005.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 9005) for the construction and maintenance of a bridge across the St. Lawrence River, report the same back with an amendment and with the recommendation that the bill, as amended, do pass.

Strike out lines 1 and 2 in the second section and insert the words—

That the bridge herein named shall be so built that the lowest part thereof at the spans hereinafter referred to shall not be less than one hundred and fifty feet above high water, and

The bill as so amended practically meets with the approval of the Secretary of War, and is not objectionable so far as the interests of navigation are concerned.

LEGATEES OF MARK DAVIS, DECEASED.

JUNE 15, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany S. 708.]

The Committee on War Claims, to whom was referred the bill (S. 708) for the relief of the residuary legatees of Mark Davis, deceased, submit the following report:

The facts out of which this bill for relief arises will be found stated in Senate report from the Committee on Claims of the present Congress, a copy of which is hereto appended as a part of this report.

Your committee concur in the conclusions stated in that report, and recommend the passage of the bill.

Senate Report No. 516, Fifty-second Congress, first session.

Mr. FAULKNER, from the Committee on Claims, submitted the following

R E P O R T:

[To accompany S. 708.]

The Committee on Claims, to whom was referred the bill (S. 708) for the relief of the residuary legatees of Mark Davis, deceased, after a careful examination of the same beg leave to submit the following report:

Your committee adopt the report submitted by the Committee on War Claims of the House of Representatives in the Fifty-first Congress as fully setting forth the facts in this case, and recommend that the bill do pass.

[House Report No. 88, Fifty-first Congress, first session.]

The facts out of which this claim for relief arises will be found stated in House report from the Committee on War Claims of the Forty-ninth Congress, a copy of which is hereto attached for information.

The Supreme Court of the United States, in the case of *Planters' Bank vs. Union Bank* (16 Wallace, page 483), say:

"A pledge had been given that rights of property should be respected. When the city was surrendered to the army under Gen. Butler, a proclamation was issued, dated May 1, 1862, one clause of which was as follows:

"All the rights of property, of whatever kind, will be held inviolate, subject only to the laws of the United States."

The court then declare that thereafter the military commander of that department had not the right "to seize private property as booty of war or to make any order, as commander, confiscating it."

Your committee report back the bill and recommend its passage.

[House Report No. 3333, Forty-ninth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 2525) for the relief of heirs of Mark Davis, deceased, having considered the same and accompanying papers, submit the following report:

The petition and proofs show that Mark Davis, now deceased, came to the United States from England at the age of 23 years, and, becoming a naturalized citizen, took up his residence in the city of Petersburg, Va. For many years prior and up to about the year 1843 he was actively engaged in business as a merchant in Petersburg and in New Orleans. About the year 1843 he retired from active business, continuing to live in Petersburg upon the income derived from his property, which was largely invested in business real estate in the best business portion of the city of New Orleans, and up to the breaking out of the war of the rebellion furnished him

an ample income. During the war his age and infirmity were such that, although residing in an insurgent State, he was not called upon to in any way render aid or comfort to the Confederacy. He did not at any time take part, directly or indirectly, in the rebellion, but was enabled to remain loyal in spirit and in act to the Government. As soon as possible after the close of the war, believing that possibly his mere residence in a hostile country during the rebellion might constitute such constructive adhesion to the Confederacy as to render a pardon necessary and proper, he applied for such pardon, and same was issued to him July 29, 1865. (Same is herewith submitted, marked Exhibit No. 1.) As further evidence of Mr. Davis's loyalty during the war, we refer to Report No. 319, House of Representatives, Forty-third Congress, first session, and to the affidavit of a number of citizens of Petersburg, therein printed.

In 1851, Mr. Davis, by formal power of attorney, appointed Edward Barnett, of New Orleans, his attorney in fact, to take possession of and to manage and control his property in that city.

When, on May 1, 1862, General Butler took possession of the city of New Orleans, he issued a proclamation in which he declared that "all the rights of property, of whatever kind, will be held inviolate, subject only to the laws of the United States." This stipulation was observed, at least so far as the property of Mr. Davis was concerned, so long as General Butler was in command of that department; but immediately that he was succeeded by General Banks a different policy seems to have been adopted. (See letter of Edward Barnett to Mark Davis, sr., November 22, 1871, Exhibit No. 2, herewith.) What then transpired is best told by the following affidavit of Edward Barnett, and the orders, receipts, etc., therein referred to, which we give here in full, and the originals of which we submit as Exhibit No. 3:

Affidavit of Edward Barnett.

[Edward Barnett, notary public and commissioner of deeds, 18 Royal street, Merchants and Auctioneers' Exchange.]

NEW ORLEANS, *November 22, 1871.*

STATE OF LOUISIANA,
City of New Orleans:

I, Edward Barnett, of the city of New Orleans, do hereby certify and declare that as the agent and attorney in fact of Mark Davis, sr., of Petersburg, Va., under power of attorney from him dated April 4, 1851, I was in possession of the following-described improved properties, rights, and credits belonging to him in this city, viz:

First. Two stores in square bounded by St. Charles, Camp, Common, and Gravier streets, both fronting on St. Charles street, and forming the corner of Common street, valued at \$60,000 and rented to Hollander and Weber at \$7,500 per annum, payable monthly.

Second. Stores Nos. 34 and 36 Magazine street, in square bounded by Magazine, Tchoupitoulas, and Gravier streets and Natchez alley. No. 34 rented at \$65 per month, No. 36 rented at \$166.66 $\frac{2}{3}$ per month, and valued at \$55,000.

Third. Property No. 244 Tchoupitoulas street, in square bounded by Tchoupitoulas, Delard, Pearl, and Louisa streets, rented at \$30 per month, valued at \$5,000,

Together with the following rent-notes, cash, etc., viz:

Forty-one notes for \$625 each, of H. Hollander and A. Weber, tenants of said stores, corner of St. Charles and Common streets, maturing monthly from the 1st of July, 1862, to the 1st of November, 1875, the first note credited with \$500, together with the lease of said stores.

Also, fourteen notes for \$166.66 each, signed by Booth & Co., maturing monthly from the 30th of September, 1862, to the 31st of October, 1863, the first note credited with \$75, for rent of said store No. 36 Magazine street, together with lease of same to said Booth & Co.

Also, one lease of said store No. 34 Magazine street, to H. Spiro & Co., at \$65 per month in advance.

Also, lease to W. Zimmerman for premises No. 244 Tchoupitoulas street, at \$30 per month.

Also, \$1,085 in Confederate States notes.

Also, \$275.30 in currency.

All which was seized under military orders by order marked A, and identified by me, of John W. McClure, captain and assistant quartermaster Department of the Gulf, under date of February 14, 1863, as will also appear by his receipt to me, marked B, and also identified by me, dated the 23d day of February, 1863.

That the above-described real estate only was returned to me by W. B. Armstrong, captain and assistant quartermaster, on the 31st of October, 1865, as per order dated 14th October, 1865, as appears by document marked C, also identified by me, the said

Armstrong refusing to account to me for said notes, ready money, or rentals of said property, but referring me for same to the Government at Washington.

In witness whereof I hereto set my hand, at the city of New Orleans, parish of Orleans and State of Louisiana, on the 22d day of November, in the year of our Lord 1871.

EDWARD BARNETT.

Sworn to and subscribed before me this 22d day of November, A. D. 1871.

[I. R. S., 5 cents.]

A. BARNETT,
Notary Public.

A.

OFFICE OF THE CHIEF QUARTERMASTER,
DEPARTMENT OF THE GULF,
New Orleans, February 14, 1863.

SIR: You are hereby ordered to pay to Col. Holabird or to me at this office, forthwith, all money, notes, bills, or other and all evidence of debts due to or belonging to one Mark Davis, of Virginia, now in your hands, or in any way under control.

Respectfully, yours,

JOHN W. MCCLURE,
Assistant Quartermaster.

B.

Received, New Orleans, February 23, 1863, from Edward Barnett, esq., forty-one notes, for \$625 each, signed by H. Hollander and H. Weber, to mature monthly, from 1st July, 1862, until 1st November, 1865. The first note is credited with \$500, paid 9th August, 1862, for rent of Mr. Davis's property, corner St. Charles and Common streets, as per lease, before E. Barnett, notary public, dated February 16, 1860.

Also, fourteen notes for \$166.67, signed by Booth & Co., to mature monthly from 30th September, 1862, until 31st October, 1863. The first note is credited with \$75 for rent of store, 36 Magazine street, as per lease, also received.

Also, one lease for store, No. 34 Magazine street, to H. Spiro & Co., at \$65 per month in advance.

Also, lease to William Zimmerman for store 244 Tchoupitoulas street, at \$30 per month.

Also, \$1,085 in Confederate States notes.

Also, \$275.25 in cash; balance as per account rendered this day.

The interlineation on reverse side is \$275.25.

S. B. HOLABIRD,
Colonel and Chief Quartermaster.
Per J. W. MCCLURE,
Captain, A. Q. M.

C.

[Office assistant quartermaster, Bureau Refugees, Freedmen, and Abandoned Lands, State of Louisiana, No. 30, Carondelet street.]

NEW ORLEANS, October 14, 1865.

Mark Davis, by his agent, having this day signed the usual receipts for his property held by this Bureau under seizure by the United States Government, said property is hereby released and restored to said claimant, possession to be given on the 31st instant. Tenants and occupants will be governed accordingly.

Respectfully,

W. B. ARMSTRONG,
Captain, and Assistant Quartermaster.

Thus there is no room for question as to the fact that on February 23, 1863, the property, real estate, notes, cash, etc., described in the foregoing affidavit and receipts, being the property of a loyal non-combatant, was taken possession of by officers of the United States, and was retained by them until October 31, 1865, when the real estate only was surrendered to the agent of the owner. During that time the owner was deprived of all use and enjoyment of the property, and whatever revenues it produced were received by the Government through its officers in possession. We

are able to show you with almost absolute certainty the amount of the revenues received from this property by the Government during the period it was so in possession.

(1) *The two buildings at corner of Saint Charles and Common streets.*—The buildings were leased November 1, 1860, to Hollander & Weber for a term of five years, expiring November 1, 1865, at \$7,500 per annum, payable monthly. To secure the payment of the rent a series of the sixty notes of \$625 each were given, one note falling due on the first of each month during the term. Hollander & Weber sublet the corner store to Francois Gunthier at \$300 per month. They also sublet the upper portion of the two stories to one Skeggs for \$300 per month. The rent notes given by Hollander & Weber were paid as they became due up to the note falling due July 1, 1862, upon which note a payment of \$500 on account was made August 9, 1862. Thus there was of this series forty-one notes, of \$625 each, due and to become due, which came into the hands of the Government officer, as specified in his receipt. On taking possession of the property the Government officers notified the subtenants of Hollander & Weber to pay their rent to the officers, and also notified Hollander & Weber to attorn to them instead of to the agent of Mr. Davis. Thereafter Gunthier paid his rent, \$300 monthly, to the United States officers, who held the notes which he had given to secure the rent, and after the return of the property he paid same to Barnett. Hollander & Weber paid to the officers the rent for that portion of the premises which they continued to occupy, paying therefor \$75 per month. The upper portion of the building, sublet to Skeggs at \$300 per month, was in August, 1863, taken possession of as a recruiting office and for other purposes, until the property was surrendered in October, 1865. It was then in such damaged condition that it required a large expenditure to make it available. The forty-one notes of Hollander & Weber surrendered by Barnett to Captain McClure were not paid. Instead of demanding payment of them the officers received directly the rents for those parts of the premises not occupied by the Government, and in October, 1865, the notes were turned over to Weber, who destroyed them. These facts are established by the affidavits of Henry Weber (Ex. No. 4), F. Hollander (Ex. No. 5), and Francois Gunthier (Ex. No. 6).

From this it is clear that on account of these premises the Government received—

From Hollander & Weber, \$75 per month from February 1, 1863, to October 31, 1865, 33 months.....	\$2, 475
From Francois Gunthier, \$300 per month for the same period.....	9, 900
Total.....	12, 375

In addition they undoubtedly received from Skeggs the rent for the upper portion of the buildings, \$300 per month, from February 1, 1863, until they took possession of the same in August; but we are unable to establish that fact, Skeggs having died before his deposition could be taken. But it is certain that from August, 1863, to October 31, 1865, the Government occupied for its own use that portion of the premises, the rental value of which was fixed by the leasing to Skegg at \$300 per month, for which the owner of the property was clearly entitled to remuneration, say 26 months, at \$300, \$7,800.

(2) *The building No. 34 Magazine street.*—The store in this building was leased to Spiro & Co. at \$65 per month. Henry Spiro swears that from early in 1863 to the latter part of 1865, the period during which the Government had possession of the property, the rents were paid monthly to the military authorities. The upper portion of this building also was used by the Government for its own purposes. The entire building would readily have rented for \$3,500 or \$3,600 per year but for the occupation of the upper portion by the Government. When the Government surrendered the premises it cost some \$1,500 to put it in repair. As to this property, see affidavits of Henry Spiro (Ex. No. 7), Bernard Dreifus (Ex. No. 8), Anthony Lafleur (Ex. No. 9), and M. Veit (Ex. No. 10).

On account of this property, therefore, the Government received—

From Spiro & Co., \$65 per month from February 1, 1863, to October 31, 1865, 33 months.....	\$2, 145
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(3) *The building No. 36 Magazine street.*—This was leased to Booth & Co. for a time, which expired October 31, 1863, at \$166.66 per month, and monthly rent notes given. These notes were paid to Barnett, Davis's agent, up to the note which fell due September 30, 1862. Upon that note \$75 was paid. The notes falling due after that date and up to October 31, 1873, were paid to the Government officers. Fourteen notes in all were so paid to the Government officers, upon the first of which was the credit of \$75, making \$2,258.24 so paid to them. After the expiration of the lease Booth & Co. remained in possession of the property until it was surrendered, October 31, 1865, paying the Government therefor the same monthly rent of \$166.66. (See affidavits of Edward Booth, Exhibits Nos. 11 and 12.)

On this account the Government received—

From Booth & Co., on 14 notes of \$166.66 each, less \$75.....	\$2, 258. 24
From Booth & Co., for rent from October 31, 1863, to October 31, 1865, 24 months, at \$166.66.....	3, 999. 84
Total	6, 258. 08

(4) *The building No. 244 Tchoupitoulas street.*—By the affidavits of William Zimmerman (Ex. No. 13) and Mrs. A. Fraub (Ex. No. 14) it is shown that from February 1, 1863, to April 1, 1865, either Zimmerman himself or Mrs. Fraub, his subtenant, were in possession, and paid rent for the premises to the Government officers. Zimmerman says he first paid \$30 and then \$25 per month. Mrs. Fraub, holding under Zimmerman until April 1, 1865, paid \$25. She then leased from the Government officers, and presents her lease and monthly receipts for \$25 per month until August 31, 1865. So that the Government here received—

From Zimmerman and Mrs. Fraub, rent from February 1, 1863, to August 31, 1865, 31 months, at \$25 per month at least.....	\$775
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(5) *Cash.*—The receipt of Captain McClure admits the receipt by him from Barnett of cash, \$275.25.

In further corroboration of the facts above stated, and as showing the character of the property in question, and of the tenants of Davis, who were in possession, we submit herewith the affidavits of John J. Barnett (Ex. No. 15) and of A. Barnett (Ex. No. 16).

RECAPITULATION.

The proof shows that during the time the Government was in possession of this property it received from it, in actual cash, as follows:

From the two stores, corner of St. Charles and Common streets.....	\$12, 375. 00
From No. 34 Magazine street	2, 145. 00
From No. 36 Magazine street	6, 258. 08
From No. 24 Tchoupitoulas street	775. 00
Cash from Barnett	275. 25
Total	21, 828. 33

Your committee are of the opinion that the claimants are justly entitled to recover the amount of money actually received by the officers of the Government in cash and as the proceeds of the rents of the buildings seized, amounting to \$21,828.33.



OWNERS AND OCCUPANTS OF CAMP TYLER, ILL.

JUNE 15, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SCOTT, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 6618.]

The Committee on War Claims, to whom was referred House bill 6618, submit the following report:

This claim was referred to the Committee on War Claims of the Fifty-first Congress and was favorably reported upon by that committee. After an investigation of the facts involved, the report of that committee, a copy of said report being hereto appended, is adopted and made a part of this report.

Your committee recommend that the bill do pass.

[House Report No. 2705, Fifty-first Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 7940) for the relief of the owners and occupants of Camp Tyler, in Cook County, Ill., report as follows:

Your committee adopt the report, hereto annexed, from the Committee on War Claims of the Fiftieth Congress, and report back the bill and recommend its passage.

[House Report No. 2089, Fiftieth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 6207) for the relief of the owners and occupants of Camp Tyler, in Cook County, Ill., report as follows:

The bill is claimed to provide for payment to certain parties by the United States for property of various individuals taken for the use of the Government in 1862, situated on what was then known as Camp Tyler, in the city of Chicago, county of Cook, and State of Illinois.

The facts in the case are as follows:

It seems that on the 26th of September, 1862, a body of paroled Federal soldiers having arrived at Camp Douglas, near the city of Chicago, which was already crowded with soldiers, the officer in command, without any express contract made with Foster & Smith, took possession of a certain race course and fair grounds, and the same were used as a camp for paroled prisoners up to November 24, 1862, known as Camp Tyler. During this occupation portions of the fence about the inclosure and portions of other structures on the grounds were used as fuel by the soldiers; other portions were burned up wantonly by the soldiers; but what portion was wantonly destroyed it is impossible from any evidence before the committee to determine with exact accuracy.

By order of Brigadier-General Tyler, then in command of Camp Douglas, a board of survey was appointed November 25, 1862, who made full examination of the damage done to said premises and the loss occasioned to the owners by the occupation of

the troops. This board of survey reported the entire damage to Smith & Foster and other parties who were owners of small structures on the premises by virtue of contracts made by Smith & Foster with them prior to said occupancy by the Government, at \$7,937.84. This estimate does not include anything for loss of business, but does include property destroyed by the troops wantonly. These claims were submitted to the Quartermaster-General years ago for allowance, and payment refused for want of jurisdiction.

For that portion of these claims arising from wanton destruction by the soldiers no compensation can be made.

"No Government has ever held itself liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers and agents. It does not undertake to guaranty to any person the fidelity of any of the authors or agents whom it employs, since that would involve it in all its operations in endless embarrassments, difficulties, and losses which would be subversive of the public interest." (Gibbons *vs.* the United States, 8 Wallace, page 269, and other authorities there cited.)

Upon careful consideration of the evidence, the committee decide that, as nearly as can be ascertained, the property for which the Government ought to be held to account amounts to \$5,868.49, as follows:

Foster & Smith.....	\$2,901.01
Reynolds & Smith.....	1,187.95
Sill & Diversey.....	274.57
Smith & Katz.....	36.37
John Comfort.....	49.30
John Halloran.....	35.00
Mary Ormsby.....	31.50
Gastreck & Erbe.....	179.48
George Vogwell.....	30.00
John Keane.....	69.52
M. McFarlin.....	175.09
Hugh O'Conner.....	69.46
Craig & Fuller.....	75.05
Edward Kehoe.....	163.85
Edward McCarthy.....	25.00
Andrew Moynahan.....	76.25
H. H. Yates.....	62.85
George Smith.....	321.24
Jared Bassett.....	105.00

Your committee therefore report back the bill and recommend its passage.



JAMES A. COOK.

JUNE 15, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STONE, of Kentucky, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 9217.]

The Committee on War Claims, to whom was referred the bill (H. R. 9217) for the relief of James A. Cook, submit the following report:

This is a claim for quartermaster's stores taken from the claimant in Caldwell County, Ky., by the Army of the United States during the late war. Claim stated at \$440.

It appears from the proof submitted that in the year 1863 the Army of the United States took from the claimant 400 bushels of corn worth \$1 per bushel, and 2 tons of hay worth \$20 per ton.

Your committee are satisfied as to the loyalty of the claimant, and that the stores were taken and used by the Army of the United States, and report back the bill and recommend its passage.



MRS. SARAH J. WAGGONER.

JUNE 15, 1892.—Committed to the Committee of the Whole House and ordered to
to be printed.

Mr. HENDERSON, of North Carolina, from the Committee on Pensions,
submitted the following

REPORT:

[To accompany S. 1708.]

The Committee on Pensions, to whom was referred the bill (S. 1708) granting a pension to Mrs. Sarah J. Waggoner, have considered the same and report:

The report of the Senate Committee on Pensions (Report No. 418) fully sets forth the facts, and your committee therefore adopt the same as their report and return the bill with the recommendation that it do pass as amended by the Senate.

[Senate Report No. 418, Fifty-second Congress, first session.]

The Committee on Pensions, to whom was referred the bill (S. 1708) granting a pension to Mrs. Sarah J. Waggoner, of Franklin, Tenn., have examined the same and report:

The claimant is the widow of Louis C. Waggoner, who was a soldier in the company commanded by John E. Crouch, in the regiment of Tennessee volunteer infantry which was mustered into the service of the United States and served during the Florida war of 1836. The husband was a pensioner of the United States in his lifetime, and at the time of his death, on account of a gunshot wound inflicted by the enemy in battle.

The soldier died January 23, 1887; the claimant filed her application for a pension, accompanied by satisfactory proof of marriage, loyalty, death of her husband, and continuous widowhood. A small amount was paid to her as arrears of accrued pension after the death of her husband, but her claim for pension as widow was rejected by the Pension Bureau upon the ground of insufficient proof that the death of her husband was the result of the wound for which he had been pensioned. The testimony upon this point is quite voluminous and somewhat conflicting, but we should have been inclined to hold, in a consideration of it, upon this point, that a preponderance of the evidence showed that the death of the soldier did result from the wound. The dying declaration of the soldier himself, several times repeated to those attending him in his last illness, was to the effect that the ball, which remained in his body, "was killing him and would kill him at last," and a very short time after making this declaration he died.

However, your committee are not disposed to put the report wholly upon this ground. The claimant is the widow of a soldier who did his duty bravely in one of the early wars of the Republic. The widows of soldiers of this war are not entitled under the general act, but we think that in equity and good faith and in the spirit of the enactment she is entitled to the same treatment as widows of the late war, who are pensioned after the death of their husbands without reference to the cause of death. The claimant in this case is shown to be a woman of worthy character. She is 72 years old and wholly penniless.

Your committee therefore report said bill favorably and recommend its passage with the following amendment:

Strike out "thirty," in line 10 of the bill, and insert "twenty-five."

MAJ. WILLIAM M. MAYNADIER.

JUNE 15, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Rhode Island, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 130.]

The Committee on Claims, to whom was referred the bill (S. 130) for the relief of Maj. William M. Maynadier, beg leave to report as follows:

House bill 3583, referred to this committee, has been carefully considered and favorably reported. The two bills are identical in language.

The committee therefore recommend the substitution of the Senate bill for the House bill, and that the House concur with the Senate in the passage of the same.



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REAR-ADMIRAL JAMES E. JOUETT.

JUNE 15, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PAGE, of Maryland, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany S. 204.]

The Committee on Naval Affairs, to whom was referred the bill (S. 204) in relation to the pay of Rear-Admiral James E. Jouett, U. S. Navy, retired, having had the same under consideration, respectfully submit the following report:

A bill identical with this having been recommended by this committee (the same being H. R. 1173), the committee adopt the report filed herewith, and for the reasons therein set forth report favorably upon this bill and recommend its passage.

House Report No. 929, Fifty-second Congress, first session.

Mr. DOLLIVER, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. R. 1173.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 1173) in relation to the pay of Rear-Admiral James E. Jouett, U. S. Navy, retired, having had the same under consideration, respectfully submit the following report:

A similar bill with this was considered by the Committee on Naval Affairs of the Fifty-first Congress, and as the bill has been recommended by the Secretary of the Navy in his letter hereto attached, we adopt said report and recommend the passage of the bill.

[House Report No. 2242, Fifty-first Congress, first session.]

The Committee on Naval Affairs, to whom was referred the bill (S. 3418) in relation to the pay of Rear-Admiral James E. Jouett, U. S. Navy, having had the same under consideration, respectfully submit the following report:

Rear-Admiral Jouett entered the Navy of the United States as a midshipman September 10, 1841, and passed through the successive grades of the service to the outbreak of the late war, when, on the night of November 17, 1861, holding then the position of a lieutenant in the United States Navy, and serving on board the U. S. frigate *Santee*, made himself conspicuous for gallantry in conducting a hazardous boat expedition against the Confederate vessel of war *Royal Yacht*, of Galveston, Tex., and in capturing and destroying said vessel, in which encounter he received a severe pike wound in the arm and side, and for which hazardous and important service he was recommended by his immediate commanding officer, Capt. Henry Eagle, for a command suitable to his rank; he was complimented in general orders by Flag-Officer William W. McKean, commanding the squadron, and ordered by the Secretary of the Navy, who officially expressed the Department's appreciation of his "daring and successful exploit," to proceed to Washington, so that he might "be given a command worthy of his gallantry."

Later, when commanding the United States gunboat *Metacomet* in the fight in Mobile Bay, August 5, 1864, he promptly pursued and captured the Confederate war steamer *Selma* after a desperate conflict, and also rendered other gallant service during that fight, for which he was commended to the Secretary of the Navy by Admiral David G. Farragut, commander-in-chief, who reported that "Lieutenant-Commander Jouett's promptness and coolness throughout the fight merited high praise, received his warmest commendation, and was worthy of his reputation." For the gallantry displayed on that occasion Commander James E. Jouett was recommended by a board of officers, of which Admiral Farragut was president, appointed in 1865, "to consider the claims of officers of the Navy for advancement for heroic conduct in battle," to be promoted thirty numbers; but for some reasons the advancement was never made.

As commander of the United States naval forces on the North Atlantic Station, Rear-Admiral James E. Jouett, by his prompt, firm, and judicious course in the spring of 1885, during the rebellion on the Isthmus of Panama, restored order, reëstablished transit, prevented great destruction of property and loss of life, and was instrumental in bringing about the surrender of the insurgent forces in the United States of Colombia, and in effecting a peaceful solution of the United States of Colombia, and reflected credit on the United States of America.

Rear-Admiral James E. Jouett, although having a record of eminent and conspicuous conduct in battle and recommended for special advancement, has reached his present grade by virtue only of the general laws governing promotion in the Navy, and has not received from his Government the special and substantial recognition to which said record entitled him, while others in the United States Navy have been advanced in grade by special nomination and confirmation, or otherwise honored or pecuniarily benefited by special legislation.

The bill (S. 3418) which seeks to remedy the injustice done this distinguished officer by rewarding him, in part, with the recognition and emoluments thereunder proposed, was carefully considered by the Naval Committee of the Senate (Senate Report 612, first session, Fifty-first Congress).

Your committee adopt the same as their report and recommend the passage of the act in question.

[Senate Report No. 612, Fifty-first Congress, first session.]

The committee to whom was referred Senate bill 1888, for the promotion of Rear-Admiral James E. Jouett, U. S. Navy, beg leave to report said bill adversely, and submit the accompanying substitute, which gives Admiral Jouett the full pay of his grade as rear-admiral.

The committee thought this just and right in view of the gallant and meritorious services of Admiral Jouett. He served with especial distinction during the war and was more than once conspicuous for his heroic conduct in battle. Although recommended by a board of admirals, twenty-five years ago, for an advancement of thirty numbers for his gallant conduct, the promotion was never made. His eminent, conspicuous, and signal acts of gallantry entitle him to some appropriate and special recognition. He has never received that reward by advancement in rank.

The committee submits herewith the following letter bearing on the subject from the Admiral of the Navy to a member of the committee:

OFFICE OF THE ADMIRAL,
Washington, D. C., March 10, 1890.

DEAR SIR: Rear-Admiral James E. Jouett has made application to Congress to be placed on the same footing, on the retired list of the Navy, with Vice-Admiral Rowan and Rear-Admiral Worden. These two officers were promoted for their services, given the thanks of Congress, which carried with it ten additional years on the active list, and finally retired on the highest pay of their grade.

Rear-Admiral Jouett bore a conspicuous part in the war and is highly spoken of by his commanding officer, Admiral Farragut. He was also recommended by a board of admirals, of which I was a member, for an advancement of thirty numbers in his grade. Had he received this promotion it would have made him a rear-admiral some years sooner than he reached that grade. He was unjustly treated then and it ought to be made up to him now.

No officer received higher commendations from Admiral Farragut than did Rear-Admiral Jouett. The papers are on file and speak for themselves. To make a distinction between the two gallant officers who were so satisfactorily retired by Congress and Rear-Admiral Jouett would be invidious, and I therefore beg of you and the other members of the Naval Committee to give Admiral Jouett's application your most generous consideration and place him on the same footing with Vice-Admiral Rowan and Rear-Admiral Worden, viz, retirement with full sea pay.

The Navy has not received a great many proofs of approval for the part it took in the late war, and acts of liberality from Congress are very gratifying. I know that I have only to draw your attention to what an officer has done to obtain a response from your generous feelings.

I have the honor to be, very respectfully, your obedient servant,

DAVID D. PORTER,
Admiral, U. S. Navy.

Hon. LELAND STANFORD,
United States Senate.

Also the following letters from officers of the Navy, representing their several corps:

NAVY DEPARTMENT,
BUREAU OF PROVISIONS AND CLOTHING,
Washington, D. C., January 10, 1890.

SIR: I learn with great pleasure that a bill has been introduced in Congress for your promotion to the rank of vice-admiral.

This merited though tardy recognition of your distinguished services during and since the war of the rebellion will, I am sure, have the earnest support of the corps I have the honor as Paymaster-General to represent. Its members have an enduring sense, not only of the faithful and brilliant record with which you have illuminated the Navy's history, but also of the broad-gauge spirit and the frankness and fairness which have always characterized your official intercourse with your brother officers of all branches of the service. Wherever and however you have been placed the verdict of "well done" has followed your acts, and the story of Mobile Bay has conferred upon you undying though intangible honor.

The commission of vice-admiral would now be the fitting climax to a long and stainless career in your country's service.

Very respectfully,

JAMES FULTON,
Paymaster-General, U. S. Navy.

Rear-Admiral JAMES E. JOUETT, *U. S. Navy.*

WASHINGTON, D. C., *January 6, 1890.*

MY DEAR SENATOR: I take the liberty of addressing you a few words in behalf of the proposition to make my friend, Admiral Jouett, a vice-admiral.

Some time ago my attention was called to the fact that such a scheme was under consideration, and I have spoken to a number of the most prominent men of the Engineer Corps of the Navy about it. As the head of the corps and representing it, I can most heartily say that this promotion of Admiral Jouett would be a source of much satisfaction to us.

His long and honorable career in the Navy has filled every officer with pride, and every member of the Engineer Corps has always felt that it had in him a warm friend, who was ready to do it and its members justice on every occasion.

To him, I believe, can truly be applied the famous line "sans peur et sans reproche."

I have written you on this matter, because it is frequently of importance to know the appreciation which an officer enjoys among his fellows, but Admiral Jouett's record is his best recommendation.

If you shall see fit to favor the proposed measure, you will honor a gallant officer who is and always has been an honor to his country.

Believe me, my dear Senator, with great respect, yours very sincerely,

GEO. W. MELVILLE,
Engineer-in-Chief, U. S. Navy.

Hon. J. D. CAMERON,
Chairman Senate Naval Committee.
Hon. EUGENE HALE,
U. S. Senate.

NAVY DEPARTMENT,
BUREAU OF CONSTRUCTION AND REPAIR,
Washington, D. C., January 6, 1890.

DEAR SIR: I inclose herewith a copy of a bill for the promotion of Rear-Admiral James E. Jouett, U. S. Navy, to vice-admiral.

Rear-Admiral Jouett is a warm personal friend, and, having been associated with him socially as well as officially for a number of years, am deeply interested in the passage of this bill, which would confer upon him an honor well merited by his distinguished career and the important services rendered, more especially as he has not heretofore received substantial recognition of the same.

I feel that I am but voicing the sentiment of many naval officers who have been associated with Rear-Admiral Jouett, and to whom his promotion will give as great pleasure as to me.

I remain, very sincerely,

PHILIP HICHBORN,
Naval Constructor, U. S. Navy.

Hon. J. D. CAMERON,
U. S. Senate, Washington, D. C.

NAVY DEPARTMENT,
BUREAU OF CONSTRUCTION AND REPAIR,
Washington, D. C., January 7, 1890.

MY DEAR SENATOR: I learn with much pleasure that a bill is about to be introduced having for its object the promotion of Rear-Admiral James E. Jouett, U. S. Navy, to the rank of vice-admiral, and I sincerely trust that this honor may, through the wisdom of Congress, be conferred upon him in recognition of daring, gallantry, and highly distinguished career in the naval service.

I desire to add my testimony to whatever else may have been said by other naval officers in indorsement of a measure honoring one who is so universally and highly esteemed by all who have the pleasure of his acquaintance and friendship.

I remain, very sincerely,

THEODORE D. WILSON,
Chief Constructor, U. S. Navy, Chief of Bureau.

Hon. J. D. CAMERON,
U. S. Senate, Washington, D. C.

In view of these facts the committee believes that Admiral Jouett is deservedly entitled to this tardy recognition.

NAVY DEPARTMENT, Washington, March 14, 1892.

SIR: I have the honor to acknowledge the receipt of a letter, dated the 26th ultimo, from the Committee on Naval Affairs of the House of Representatives, inclosing H. R. bill No. 1173, "in relation to the pay of Rear-Admiral James E. Jouett, retired," and requesting the opinion of the Department upon the merits of the bill.

It is important, in the consideration of the question involved in the provisions of this bill, that the committee should be informed as to the contents of the records of the service of this officer, as the same appear in this Department. I have, therefore, to inclose here with a printed copy of a memorandum prepared and forwarded by the Secretary of the Navy to Hon. John S. Williams, United States Senate, March 2, 1880, at which time the propriety of the advancement of Rear-Admiral Jouett, then a captain in the Navy, for eminent and conspicuous conduct in battle, was under consideration.

The memorandum recites briefly the conspicuous war service of Rear-Admiral Jouett, the chief features of which were the capture and destruction of the rebel privateer schooner *Royal Yacht* off Galveston, Tex., during the night of November 7, 1861, and the capture of the Confederate war steamer *Selma* in Mobile Bay, August 5, 1864.

Referring to the capture of the *Royal Yacht*, Capt. Eagle, U. S. Navy, then commanding officer of the U. S. S. *Santee*, to which vessel Rear-Admiral, then Lieutenant, Jouett was attached, in his report, dated November 15, 1861, upon this engagement to the Department says:

"Among the brave officers and men Lieut. James E. Jouett and Mr. William Carter, gunner, were conspicuous for their coolness and courage. They were the first to board the vessel.

"It is with pleasure that I would call the attention of the Department to the gallantry of Lieut. Jouett. He was seriously wounded in the arm and side at the commencement of the contest. Although suffering from wounds and loss of blood, he showed great firmness throughout, and after setting fire to the vessel he was three hours in the launch pulling for the ship and had the care of twelve prisoners and six of his wounded men. I can, with confidence, recommend him for a command of any vessel in the service suitable to his rank, although I should much regret his detachment from this ship, as he is a very efficient officer."

The views of Flag Officer McKean, then commanding the Gulf blockading squadron, upon the conduct of the officers and men engaged in the capture of the *Royal Yacht* were expressed in a general order, dated December 17, 1861, which contains the following paragraph:

"The commander-in-chief of the United States naval forces in the Gulf of Mexico is anxious to express in the most public manner his entire appreciation of the gallantry and coolness displayed by the officers and men of the U. S. frigate *Santee*, engaged in the expedition for the seizure and destruction of the privateer schooner *Royal Yacht*, in the harbor of Galveston, on the night of the 7th ultimo."

The Secretary of the Navy, in a communication addressed to Flag Officer McKean, under date of December 23, 1861, acknowledging the receipt of the official reports of the capture and destruction of the *Royal Yacht*, said:

"The Department can not, in too high terms, express its admiration of the daring and successful exploit of Lieut. Jouett and the officers and seamen under his command.

"The capture of a schooner well armed and manned and with every advantage of resistance, after a desperate encounter, speaks well for the intrepidity and bravery of the captors;" with which communication the Secretary inclosed an order detaching Lieut. Jouett from the *Santee* and directing him to proceed to New York, stating that it was "the purpose of the Department to give him a command worthy of his gallantry."

In his detailed report, dated August 12, 1864, of the battle of Mobile Bay, Rear-Admiral Farragut, referring to the conduct of Rear-Admiral, then Lieut. Commander, Jouett says:

"The rebel gunboats *Morgan*, *Grimes*, and *Selma* were ahead, and the latter particularly annoyed us with a raking fire, which our guns could not return. At two minutes after 8 I ordered the *Metacomet* to cast off and go in pursuit of the *Selma*. Capt. Jouett was after her in a moment, and in an hour's time he had her as a prize. She was commanded by P. V. Murphy, formerly of the United States Navy.

"Lieut. Commander Jouett's conduct during the whole affair commands my warmest commendations. The *Morgan* and *Gaines* succeeded in escaping under the protection of the guns of Fort Morgan, which would have been prevented had the other gunboats been as prompt in their movement as the *Metacomet*.

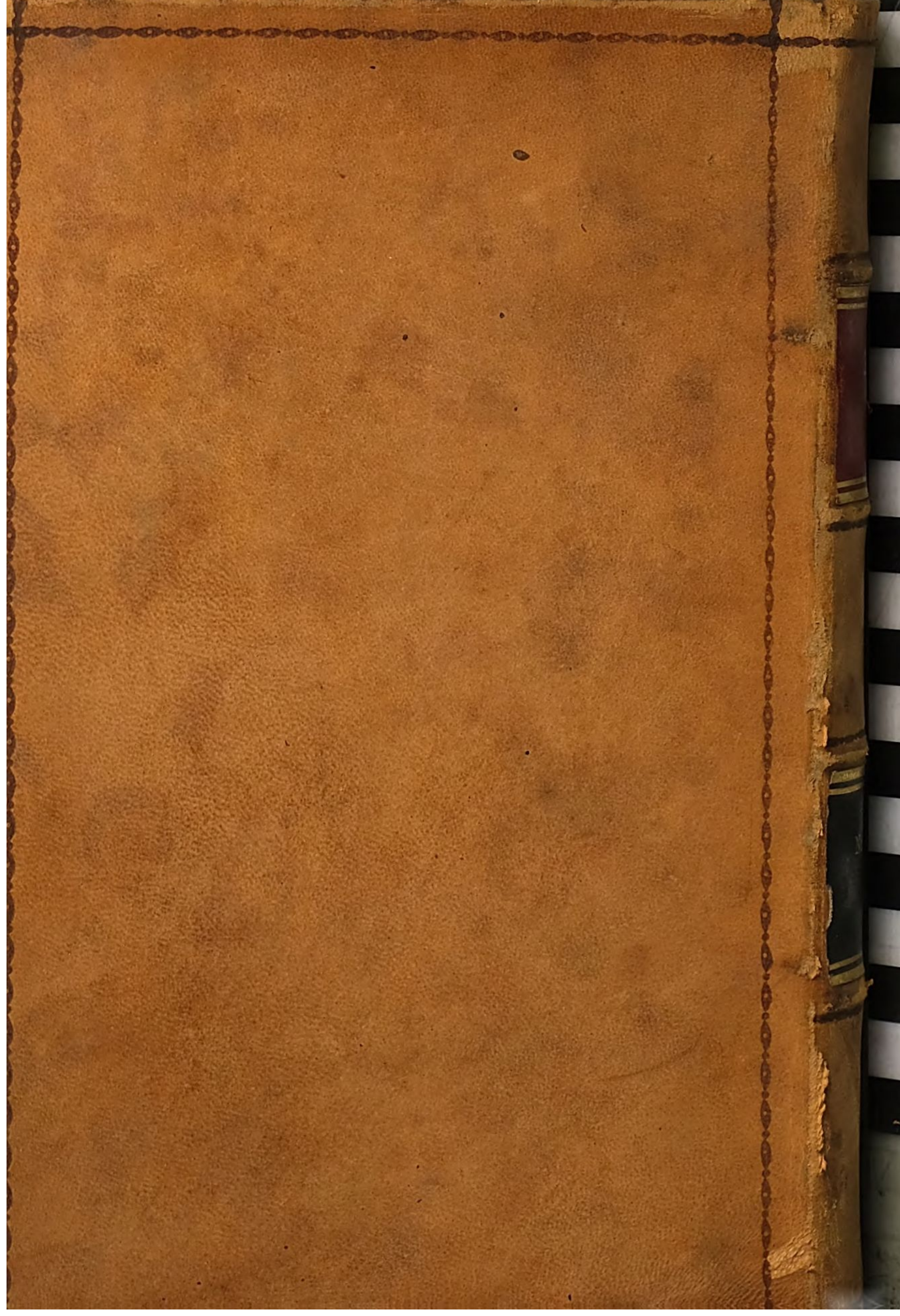
"Our little consort, the *Metacomet*, was also under my immediate eye during the whole action up to the moment I ordered her to cast off in pursuit of the *Selma*. The coolness and promptness of Lieut. Commander Jouett throughout merit high praise; his whole conduct was worthy of his reputation."

In reply to the request contained in the committee's letter, I have to state that after a careful examination of the records of the Department relating to the services of Rear-Admiral Jouett during the late war, and especially of those relating to his capture of the privateer schooner *Royal Yacht* off Galveston, Tex., and the declarations contained in the reports of the commanding officer of the *Santee*, the vessel to which he was then attached, and of Flag Officer McKean, commanding the Gulf blockading squadron, to which that vessel belonged, expressing their appreciation of the gallantry displayed by Rear-Admiral Jouett in the capture of the *Royal Yacht*, and of those relating to his conduct in the battle of Mobile Bay and in the capture of the Confederate gunboat *Selma*, as contained in the report of Admiral Farragut, in which he recognizes with high praise the coolness and promptness of the conduct of Rear-Admiral Jouett during the battle and the operations in Mobile Bay, the case of Rear-Admiral Jouett appears to be an exceptional one, meriting the favorable consideration of Congress.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

HON. HILARY A. HERBERT,
Chairman, Committee on Naval Affairs, House of Representatives.



House documents

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